

Business influences on government decisions  
affecting public health: a case study from Australia  
and New Zealand

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To Robin White

1948 – 2016

## **Abstract**

The aim of this thesis is to enable a better understanding of how business power influences government policy decisions when there is conflict between business and public health objectives. This is to support more effective public health advocacy. The aim is addressed by a case study looking at the influences shaping government decisions on front-of-pack nutrition labelling (FoPL) during and following the 2009-11 Review of Food Labelling Law and Policy (the Review) in Australia. There is a particular focus on food industry influence.

Multiple sources of evidence and multiple data collection methods were needed given the breadth of issues covered. A mixed methods triangulation design using both quantitative and qualitative data was adopted. Data were obtained from document and literature searches, on-line monitoring of events, requests for official information, content analyses of submissions with both quantitative and qualitative elements, and interviews with key informants.

The Review Panel recommended that an voluntary, interpretive traffic light system (TLS) be introduced. Australian governments rejected a TLS. Instead they announced that a new interpretive system would be developed through a collaborative process involving food industry, public health and consumer representatives. The outcome of this process, the voluntary Health Star Rating (HSR) system, was launched in 2014. While initially opposed to interpretive FoPL, many food manufacturers gradually came to adopt the HSR system, while consistently opposing it becoming mandatory.

Public health and consumer groups had two clear losses. A TLS they had called for in submissions was not implemented, and the HSR system was voluntary. They did, however, have a major gain. An interpretive system was introduced that had the potential to become mandatory if not sufficiently adopted. The food industry was successful in avoiding a TLS, but not in avoiding a government-backed interpretive system.

The author developed a framework of five 'aspects of power' through which stakeholders could influence government decisions. The two aspects that emerged as most important FoPL decisions during and after the Review were institutional and ideological power. Institutional power for both the food industry and public health advocates arose from institutional arrangements including the regulatory policy environment (favouring industry) and the predominance of health ministers on the Council/Forum (favouring public health). Pro-market ideology had shaped the regulatory policy environment, while the predominance of left-leaning governments in Australia during the period when crucial decisions were made increased the ability of public health advocates to achieve gains.

In 2014 the New Zealand Government, which had declined to participate in the Review, joined with Australia in supporting implementation of the HSR system.

Eight suggestions for public health advocacy were drawn from the case study. These included seeking change to regulatory policy, trying to change the discourse about regulatory policy, forming policy communities around important public health issues, and (for New Zealand) seeking to change the location of policy advice on food regulation within the New Zealand government structure.

## Acknowledgements

Coming to start and then complete this thesis has been a long journey made possible by the support of many people. The first one I must thank is my late partner Robin White. Her support goes back five decades to when she financially supported me through a Masters degree. Once I commenced PhD study she helped make space in both our lives to make it possible, and continued to encourage and support me through to her death in 2016.

Thanks are also due to my wider family and friends for their constant encouragement, and their forbearance with my sometimes unsociable behaviour.

My supervisors, Associate Professor George Thomson and Professor Louise Signal, from the beginning backed the proposal I took to them to do a case study of the Review of Food Labelling Law and Policy. They taught me a great deal about what a public health advocate needed to do in order also to be an academic. Their help and support has extended well beyond academic matters, particularly in encouraging me not to recommence study after Robin's illness and death until I felt ready.

Before I commenced this thesis I benefited from working in public health advocacy with a number of people who helped shaped my interest in finding effective ways of progressing public health goals when opposed by business. These included in New Zealand Dr Robyn Toomath, Dr Jan Pearson, Nikki Chilcott and Dr Rob Beaglehole, and in Australia Jane Martin and Dr Rosemary Stanton.

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## **Publications arising from the thesis**

### **Peer-reviewed publication**

**White J**, Signal L. Submissions to the Australian and New Zealand Review of Food Labelling Law and Policy support traffic light nutrition labelling. *Aust N Z J Public Health*. 2012;36(5):446-51.

### **Conference presentations**

**White J**, Thomson G, Signal L. Food labelling issues in New Zealand: where next for the health sector. Paper presented at: Rethinking our future. Agencies for Nutrition Action Annual Conference; 2011 May 3-4; Auckland.

**White J**, Signal L, Thomson G. Battle lines are drawn: Food labelling issues in Australia and New Zealand. Poster session presented at: 2011 Annual Meeting of the International Society for Behavioral Nutrition and Physical Activity; 2011 Jun 15-18; Melbourne, Australia. 2011.

**White J**. Front-of-pack nutrition labelling in Australia and New Zealand. Oral presentation at Big Food Symposium, Wellington, 17 Feb 2014. [Internet] Wellington:: University of Otago; 2014 [cited 2014 Aug 3]; Available from: <http://www.otago.ac.nz/wellington/otago065808.pdf>.

### **Editorial**

**White J**, Thomson G, Signal L. Front-of-pack nutrition labelling: where to now? *NZ Med J*. 2010;123(1324):12-6.

### **Contribution by supervisors**

In all of the above the thesis author was the first author, and was in each case entirely responsible for conceiving the project (publication or presentation), designing and conducting work done on the project, and producing an initial draft.

Both supervisors were involved as second or third authors. In all cases their role was advising the author on how to approach the projects, and making suggestions regarding the text.



## **Timeline of work on the thesis: 2010 – 2018**

Work commenced on the thesis in 2010. The first step was a pilot study of content analysis of submissions to the Review of Food Labelling Law and Policy (the Review). This was summarised in an editorial in the New Zealand Medical Journal in October 2010.<sup>1</sup>

For the first twelve months the main work done was completion of a content analysis of submissions. The reason for starting with this, rather than a literature review, was the desire to publicise the content of submissions before decisions were made about the outcomes of the Review. This desire came from a wish to make information from the submissions, that might not otherwise become known, available to government decision makers. The findings were, however, not published until 2012 after key decisions had been made.<sup>2</sup>

Interviews with key informants were conducted in 2012. Literature reviews, and construction of a theoretical framework for analysing the study's results, occupied most of 2011, 2012 and 2013. Interviews with key informants were conducted in 2012. This was followed by writing up the Results and much of the Discussion. This came to a stop in May 2015, however, when my partner was diagnosed with a terminal illness and I became her caregiver. The University granted me an indefinite deferral of study.

I re-enrolled in July 2018. I began by doing some further research on what had happened relevant to Review outcomes in the more than three years my study had been deferred. This proved to be of substantial benefit in helping shape my conclusions.

From July 2010 to June 2013 I was a full-time student. This changed to part-time from July 2013 for the remainder of the study period.

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## List of acronyms and abbreviations

ACDPA	Australian Chronic Disease Prevention Alliance
ADA	Australian Dietary Guidelines
AFGC	Australian Food and Grocery Council
CER	Closer Economic Relations (between Australia and New Zealand)
Council	Australia and New Zealand Food Regulation Ministerial Council
DIG	Daily Intake Guide
FIG	Food Industry Group (New Zealand)
Forum	Legislative and Governance Forum on Food Regulation
FRSC	Food Regulation Standing Committee
FSANZ	Food Standards Australia New Zealand
Food Treaty	Australia-New Zealand Joint Food Standards Agreement
FoPL	Front-of-Pack Label
FRA	Food Regulation Agreement (Australia)
GDAs	Guideline Daily Amounts (United Kingdom)
HSR	Health Star Rating
NGO	Non-Government Organisation
NIP	Nutrition Information Panel
NZFGC	New Zealand Food and Grocery Council
OBPR	Australian Office of Best Practice Regulation
the Panel	Independent Expert Panel for the Review of Food Labelling Law and Policy
the Review	Review of Food Labelling Law and Policy
TLS	Traffic Light System





# Chapter 1

## Introduction

### ***1.1 Background***

This thesis explores the way that business interests influence public policy when challenged over the detrimental effects of their practices or products on population health. The Review of Food Labelling Law and Policy conducted in Australia from 2010 is used as a case study.

Before undertaking this study the author came to appreciate the power wielded by business over decisions affecting population health while working for FOE (Fight the Obesity Epidemic). FOE was a New Zealand NGO concerned with reducing obesity and type 2 diabetes in children. The issues with which FOE was concerned included food advertising to children, supermarket practices, taxing unhealthy food, and food labelling. FOE aimed to change the food environment to make healthy choices easier, but in every case some part of the food industry acted as a powerful barrier to progress.

A ray of hope appeared In 2007 when a Public Health Bill was introduced into the New Zealand Parliament. This included, for the first time in New Zealand public health legislation, clauses relating to non-communicable diseases.<sup>3</sup> One clause in particular, allowing the making of regulations for the purpose of reducing risk factors for such diseases, was particularly encouraging for public health advocates. The Bill, however, lapsed with the election of a National-led Government in 2008..

The National-led Government proceeded to cut or stop funding for health NGOs that engaged in advocacy,<sup>4</sup> and in 2009 introduced a regulatory policy that heavily discouraged any new regulation of business that might affect economic growth.<sup>5</sup> This

was a difficult time for public health advocates, unable to make progress in the face of apparently unchallengeable business practices detrimental to population health.

Some New Zealand research on conflicts between industry and public health had looked at the submissions from both groups of stakeholders to Parliamentary committees.<sup>3, 6, 7</sup> This yielded insights into the approaches taken by business, particularly the way it framed issues to shift the debate from potentially harmful products to the consumers of those products. Appeals for personal responsibility and freedom of choice were prominent themes. A lesson for the author from this research was that a focus on countering business arguments was not likely to drive change. Instead the question arose as to why, given business arguments could generally be refuted, governments continued to support business positions.

The Review of Food Labelling Law and Policy (the Review) provided an opportunity for a case study on how public health advocates might achieve better outcomes when opposing industries selling products detrimental to population health. While conducted in Australia, the Review was relevant to New Zealand because of joint trans-Tasman arrangements for food regulation.

## ***1.2 Aim and research questions***

The aim of this thesis is to enable a better understanding of how business power influences government policy decisions when there is conflict between business and public health objectives, and thereby to support more effective public health advocacy.

The choice of food labelling for the case study reported in this thesis was not because it was seen by the author as one of the most important areas in which government intervention was required to improve population health, or even to improve the food environment. Fifty-two New Zealand public health experts rated implementation of the Health Star Rating (HSR) system arising from the Review as fifth in importance as a dietary intervention for the New Zealand Government in 2015: behind improving food composition, restricting the marketing of unhealthy food to children, keeping schools

and pre-schools free of commercial promotion of unhealthy foods, and ensuring that schools and pre-schools provided only healthy food for children.<sup>8</sup> A review of the effect of policy actions to improve population diets found food labelling to be one of the less effective interventions.<sup>9</sup> Another report on dietary interventions likely to be effective at the population level did not mention food labelling at all.<sup>10</sup> Rather, food labelling was chosen because the timing of the Review provided an opportunity for a case study that could address the aim of this thesis.

Food labelling had proved to be a major battle ground between the food industry and public health practitioners during New Zealand's Health Select Committee Inquiry into Obesity and Type 2 Diabetes in 2006 and 2007.<sup>3</sup> Further, at the time the study was planned it was known from a consultation paper released by the Australian Panel established to conduct the Review<sup>11</sup> that front-of-pack nutrition labelling (FoPL) would be strongly contested between food industry and public health interests. The research questions were therefore shaped with this in mind, but were also influenced by the author's New Zealand experience with business power. The questions were:

1. Which food industry, public health and government positions on front-of-pack nutrition labelling issues were considered as part of the Review, and how were these positions reflected in Review outcomes?
2. Which factors influenced government decisions about front-of-pack nutrition labelling during the Review and the subsequent development of the Health Star Rating system, and how were the decisions influenced by these factors?
3. What can be learned from the case study about how to ensure better public health outcomes from future government decision-making when business and health interests conflict?

Research Question 2 was expanded in 2013 to include development of the HSR system following the decision that this was to be the FoPL outcome of the Review.

Research Question 3 acknowledged the main motivation for the study, the need to understand more about the power of business in influencing government decisions affecting population health in order to counter it more effectively.

### ***1.3 The structure and content of the thesis***

The order of chapters in this thesis generally follow convention. Methods (Chapter 2) precedes the literature reviews in Chapters 3 and 5, as it includes descriptions of the ways in which material for the reviews was found. Chapters 6 and 7 are the results chapters, and are followed by the Discussion (Chapter 8) and Conclusions (Chapter 9). The odd one out is Chapter 4, which develops a framework for considering business power based on the literature review on Chapter 3, and is an original output of the thesis.

Chapter 2 (Methods) describes the mixed methods ‘triangulation design’ using both quantitative and qualitative data used for the case study. The chapter describes how data were obtained, combined and reported from literature searches, monitoring of events of the course of the Review and subsequent development of the Health Star Rating (HSR) system, content analysis of submissions to the Review, and interviews with key informants. It also describes how the framework of ‘aspects’ of power in Chapter 4 was constructed. The chapter is supplemented by four appendices supplying more detail.

Chapter 3 is a literature review that considers theories about power and political decision making. The chapter summarises a number of theories that have implications for the roles played by business and other actors in influencing government decisions. The theoretical perspectives included are pluralism, neopluralism, theories about elite power, Marxism, institutionalism, policy and governance networks, and two political ideologies (social democracy and neoliberalism).

Chapter 4 (Aspects of power to influence political decisions) builds on the theoretical perspectives considered in Chapter 3 to create a framework of aspects of the power of actors, particularly business, to influence political decisions. Five aspects are distinguished. The first, agency power, is defined as the ability of actors to influence government decisions in their favour through deliberate, intentional actions such as lobbying. The remaining four are contextual in that they form or influence part of the



environment in which decisions are made. Investment power is the ability of business entities to have political influence because of the importance to the economy of their investment decisions. Network power is the ability of actors to have influence because of their membership of networks. Ideological power is the ability of political actors to have government decisions influenced in their favour because of the relative dominance of an ideology (social democracy or neoliberalism). Finally, institutional power is derived from institutional arrangements such as political structures, laws and operating procedures.

Chapter 5 is a second literature review, this time of business practices that had been documented as being used by industry when products are under threat from concerns about their detrimental effect on population health. These practices reflect ways in which business entities set out to exercise agency power. They range from what seem acceptable in a well-functioning democracy, such as lobbying, to practices that do not, such as creating front groups that purport to be independent, or misusing science.

Chapters 6 and 7 are results chapters which report information to be used in the Discussion in answering the research questions.

Chapter 6 reports on the Review from its origins to the publication of the Review Panel's report in December 2011. Included are two content analyses of submissions to the Review. The main outcome from the Review Panel's report relevant to front-of-pack nutrition labelling (FoPL) was a recommendation that an interpretive FoPL system (one displaying the healthiness of the product on the label in an easily distinguishable form) was required. The Panel recommended that a traffic light system was suitable for this purpose. This outcome was heavily supported in submissions from public health organisations, and opposed by food manufacturers and retailers.

Chapter 7, the second results chapter, begins with the responses of Australian and New Zealand governments to the Review Panel's recommendations. It reports events from the rejection of the Panel's traffic light labelling recommendation to the government-led development of an interpretive FoPL scheme, the HSR system.

Chapter 8 (Discussion) answers each research question in turn.

Public health and consumer groups wanted a mandatory, interpretive FoPL scheme to be introduced. After initially supporting traffic light labelling they switched their support to the interpretive HSR system, but wanted it to become mandatory. Many food manufacturers gradually came to accept the HSR system, while consistently opposing it becoming mandatory (Research Question 1).

Institutional factors appeared to be the major influences on the eventual decision of Australian and New Zealand governments to develop and implement the HSR system. It was argued that the outcome – voluntary implementation of the HSR system – was most influenced by the dominance of health ministers on the Forum of Australian and New Zealand Ministers responsible for food regulation. Forum decisions, however, were constrained by the regulatory policy environment. The fact that the HSR system remained voluntary was mainly attributed by the author to the pro-business regulatory policy environment in both countries. Public health advocates derived institutional power from the preponderance of health ministers in the Forum, and food manufacturers from the regulatory policy environment (Research Question 2).

An important point in the discussion of the regulatory policy environment is the impact on this of ideological power. The regulatory policy environment arguably provides the best single explanation as to why the mandatory FoPL system sought by public health advocates has not, at least by 2018, been achieved. This does not mean, however, that it can be concluded that institutional power was the most important aspect of power influencing Review outcomes. An alternative conclusion would be that ideological power was more important because of its role in shaping the regulatory environment.

Eight recommendations for public health advocacy were drawn from the case study. These included seeking change to regulatory policy, trying to change discourse about regulatory policy, forming policy communities around important public health issues, and (for New Zealand) seeking to change the location of policy advice on food regulation within the New Zealand government structure (Research Question 3).

The Discussion concludes by considering the strengths and limitations of the thesis. The main strength was the wide net it cast to identify sources of business power when industry came into conflict with public health. The framework developed in Chapter 4 enabled ways in which business power influenced FoPL decisions to be identified when they may otherwise have been missed. But the breadth of the study was the sources of its weaknesses, a lack of depth in considering some of the issues.

Answers to each research question were summarised in Chapter 9 (Conclusions), followed by suggestions for further research..

#### ***1.4 Some key events before, during and following the Review***

Table 1.1 lists key events relating to the Review that are reported and discussed in this thesis.

**Table 1.1 Key events before, during and after the Review of Food Labelling Law and Policy**

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1983	Closer Economic Relations Agreement between Australia and New Zealand
1986	Australian National Food Standards Council (health ministers) established
1995	The Food Treaty between Australia and New Zealand
2000	The Australian Food Regulation Agreement
2002	The Food Standards Australia and New Zealand Act
2008	Commissioning of the Review of Food Labelling Law and Policy
2009	Review Terms of Reference agreed and the Review Panel appointed
2009	Ministerial Council endorsed Front-of-pack Policy Statement
2011	Review Panel reported and governments responded
2013	Development of the HSR system announced by Ministers
2014	Ministers agreed to implement the HSR system
2019	Five year evaluation of the HSR system to go to Ministers

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### ***1.5 Publications of particular relevance to this thesis***

Four Australian studies published between 2016 and 2018 have covered some of the same ground as this thesis. The first examined publicly-available information about the political activities of five major Australian food industry players, including the Australian Food and Grocery Council (AFGC).<sup>12</sup> A second looked at corporate political activities with the Australian food industry based on interviews with key players.<sup>13</sup> The third was a comparative study of FoPL development processes in Australia, New Zealand and the United Kingdom.<sup>14</sup> The fourth study was concerned specifically with the HSR process in Australia.<sup>15</sup> It appeared from the responses in these studies that at least one respondent in each of the last three of these studies had participated in the HSR development process. The results from all four studies were consistent with the findings reported in this thesis.

### ***1.6 Some conventions used in writing this thesis***

There are four levels of heading in this thesis: chapters, major sections, sub-sections of major sections, and in some cases sub-sections of these sub-sections. Cross-references are generally in brackets and preceded by 's'. As an example (s3.4.5.6) refers to Chapter 3, section 4, sub-section 5, and further sub-section 6. If the entire chapter was being referenced it would be referred to as Chapter 3.

The Vancouver reference style using superscript numerals was selected, in part because the author plans to publish material from the thesis in health-related journals likely to use this. Author names and dates are still used in the text on occasion when this might be helpful for readers, particularly in the literature review chapters.

### ***1.7 Online references that are no longer available***

Much of the data collection for this thesis was from online sources. Some of these were originally accessed as far back as 2010. All references were checked for availability in 2018. Alternative URLs were found for many of those where the original URLs no longer worked. In some cases, however, alternatives could not be obtained. Most of these

cases occurred because websites had been updated without old material being migrated to the new website or placed in publicly-available archives.

Copies of references not recorded as being available in 2018 can be obtained from the author: [johnwhite45@orcon.net.nz](mailto:johnwhite45@orcon.net.nz). This mainly applies to references no longer on the websites of the Australian Food and Grocery Council and Australian consumer organisation Choice.



## **Chapter 2**

### **Methods**

#### ***2.1 Introduction***

This study is an in-depth inquiry into front-of-pack nutrition labelling (FoPL) during the course of, and following, the Review of Food Labelling Law and Policy (the Review). The author considered, given the topic, that the context in which the Review occurred would be crucial for its outcomes. This context was likely to be multifaceted, with an amorphous and large set of variables that required consideration in order to fully address the research questions. Multiple sources of evidence and multiple data collection methods were needed as a result. A case study conducted within a critical realist philosophical and theoretical framework was selected as the most appropriate means of obtaining and analysing such data for this study (s2.2).

Data were obtained from literature searches (s2.3), on-line monitoring of events using Google Alerts (s2.4.1), requests for official information (s2.4.2), content analysis with both quantitative and qualitative elements (s2.5 and s2.6), and interviews with key informants (s2.7). The case study design thus provided for triangulation, with research questions informed by data obtained from quite different sources.

The chapter concludes by describing how the framework for ‘aspects’ of power developed in Chapter 4 was constructed (s2.8).

#### ***2.2 The philosophical and methodological approach adopted***

##### **2.2.1 The philosophical and theoretical underpinning**

The philosophical underpinning of the research reported in this thesis is that of critical realism. This approach combines realist ontology (which posits that natural and social

phenomena exist independently of our knowledge of them) with a recognition that our knowledge of social phenomena is concept-dependent and thus socially constructed. Social phenomena need to be examined critically in order to understand and explain them.<sup>16, 17</sup>

Critical realist theory was developed as means of avoiding perceived problems with positivism on the one hand and constructivism and interpretivism on the other.<sup>18, 19</sup> Positivism, a widely used but loosely defined term, refers to a variety of approaches that give primacy to knowledge resulting from use of the scientific method over that gained in other ways.<sup>20</sup> It has been challenged by critical realists as reducing ontology (what is real) to epistemology (what can be empirically known).<sup>18</sup> Constructivist perspectives, in contrast, can “view reality as entirely constructed through and within human knowledge or discourse”.<sup>18 p182</sup> This can lead to the position that one person’s or group’s view of the world is as valid and worthy of respect as any other, leaving no room for a critical approach.<sup>20</sup> Interpretivism is similarly subjective in that it involves a focus on understanding the meanings that individuals assign to social phenomena in specific contexts.<sup>19</sup>

Critical realism combines elements of both positivism and interpretivism. It enables theorists and researchers to provide broadly based causal explanations of social phenomena by taking account of both actors’ subjective interpretations and the structures and mechanisms that exist independently of human thought.<sup>19</sup>

A feature of critical realism making it particularly relevant to this thesis is its approach to causality in relation to social phenomena. Critical realists see identifying causes not as finding relationships between ‘causes’ and ‘effects’, but of identifying causal mechanisms. Causal analysis needs to take into account “not only when ‘C’ leads to ‘E’, but also sometimes when ‘C’ does not lead to ‘E’”.<sup>16 p105</sup> Change processes typically involve a number of causal mechanisms and, “depending on conditions, the operation of the same mechanism can produce quite different results ... [while] different mechanisms may produce the same empirical result”.<sup>16 p10</sup>



Knowing that 'C' is followed by 'E' is not enough. We want to understand how 'C' produced 'E'. Critical realists approach this using a mode of inference they term 'retroduction' "in which events are explained by postulating (and identifying) mechanisms which are capable of producing them".<sup>16 p107</sup>

Social phenomena, for critical realists, have both causal powers and liabilities. These are potentialities that can be enabled or constrained in actualising causal power. The process of retroduction attempts to uncover the particular phenomena which allow a causal power to take effect. It has been argued that the identification of causal mechanisms resulting from retroduction makes this feature of critical realism well suited to making recommendations on social policy.<sup>18</sup>

For complex social phenomena there will typically be multiple potential sets of mechanisms which may have produced the outcomes being researched. The most likely cause of a particular phenomenon that is selected should consist of "the set of mechanisms which interact to generate the most accurate representation of the "real world" given our existing knowledge".<sup>19 p795</sup>

### **2.2.2 Principles for conducting research using a critical realist framework**

Critical realists need to be able to defend why the causal mechanisms they identify are most likely those to be acting in the real world. Wynn and Williams (2012)<sup>19</sup> have identified five methodological principles derived from critical realism that can help with constructing and evaluating causal explanations. Table 2.1 is a reduced version of the table Wynn and Williams used to set out their five principles.

The evaluation criteria column in Table 2.1 is reproduced in full from the source table. It enables the current study to be assessed for its alignment with best practice in critical realist research. The extent to which it does is considered in section 8.5.1 where it is concluded that alignment with critical realist best practice is a strength of the study.

**Table 2.1 Methodological Principles of Critical Realism (from Wynn and Williams, 2012)**

<b>CR Principle</b>	<b>Evaluation Criteria</b>
<p><b>Explication of Events</b></p> <p>Identify and abstract the events being studied as a foundation for understanding what really happened in the underlying phenomena.</p>	<ul style="list-style-type: none"> <li>• Thick description of case “story” including actions and outcomes</li> <li>• An abstracted sequence of events (including the experiences of participants and observers)</li> </ul>
<p><b>Explication of Structure and Context</b></p> <p>Identify components of social and physical structure, contextual environment, along with relationships among them....</p>	<ul style="list-style-type: none"> <li>• Description of the structural entities, constituent parts, and contextual conditions existing in the case</li> <li>• Identification of the relationships among the entities</li> <li>• Explication of changes to the structure</li> <li>• Description of the resulting emergent properties</li> </ul>
<p><b>Retroduction</b></p> <p>Identify and elaborate on powers/tendencies of structure that may have interacted to generate explicated events.</p>	<ul style="list-style-type: none"> <li>• Identification of a set of plausible candidate causal mechanisms</li> <li>• Logical and analytical support for the existence of proposed mechanisms linking the structure to events</li> </ul>
<p><b>Empirical Corroboration</b></p> <p>Ensure that proposed mechanisms have causal power and that they have better explanatory power than alternatives.</p>	<ul style="list-style-type: none"> <li>• Analytical validation of proposed mechanism based on case data</li> <li>• Assessment of explanatory power of each mechanism relative to alternative explanations</li> <li>• Selection of the mechanism(s) that offers the <i>best explanation</i></li> </ul>
<p><b>Triangulation &amp; Multimethods</b></p> <p>Employ multiple approaches to support causal analysis based on a variety of data types and sources, analytical methods, investigators, and theories.</p>	<ul style="list-style-type: none"> <li>• Multiple theoretical perspectives</li> <li>• Multiple analytical and methodological techniques</li> <li>• Variety of data sources and types</li> <li>• Multiple investigators</li> </ul>

### 2.2.3 The case study design adopted for this thesis

While critical realism does not dictate methodological choices, case studies have been identified as perhaps the best method for investigating complex social phenomena.<sup>19</sup> This study meets the criteria for which a case study is appropriate as set out by Yin (2009).<sup>21</sup> The thesis describes “an empirical inquiry that investigates a contemporary phenomenon in depth and within its real-life context”.<sup>21 p18</sup> This inquiry “relies on multiple sources of evidence, with data needing to converge in a triangulating fashion”.<sup>21 p18</sup> It “benefits from the prior development of theoretical propositions to guide data collection and analysis”.<sup>21 p18</sup>

A review of the use of research evidence to inform health policy concluded that policy makers increasingly require “syntheses that include ... both qualitative and quantitative research findings”.<sup>22 p18</sup> With this in mind a “triangulation design” (Cresswell and Plano Clark, 2007<sup>23</sup>) was adopted for the case study. Such designs involve obtaining complementary data on a topic by using a mix of quantitative and qualitative methods. They are ‘one-phase’ designs: data collection using different methods proceeds at the same time, with datasets used to validate each other and be reported together.<sup>23</sup> Some datasets were obtained using what Cresswell and Plano Clark call a “data transformation model”<sup>23 p63</sup> in which qualitative data are collected and then transformed into quantitative data. Other qualitative data are directly reported as such. This takes advantage of the flexibility the design provides to analyse and present data on different topics within the case study in ways best suited both to each topic and the available data on that topic.

### 2.2.4 Triangulation

Yin (2009) regarded the opportunity to collect evidence from multiple sources as a major strength of case studies. This allows “development of *converging lines of inquiry*, a process of triangulation and corroboration” that makes it more likely that findings or conclusions are “convincing and accurate”.<sup>21 pp115-6</sup>

Triangulation can apply not just to data sources (data triangulation) but also to theories, methods and investigators.<sup>24</sup> As well as using data triangulation the study reported in this thesis also uses theory triangulation (examining the data from multiple theoretical perspectives) and methodological triangulation (use of multiple methods). Investigator triangulation (use of several different researchers or evaluators) is however absent, except for the use of a second person to code content analysis data as a check on the author's coding.

The extensive use of triangulation in this study increases the likelihood that the results reported are valid.

## **2.3 Literature searches**

### **2.3.1 Narrative literature reviews**

The presentation of much of the material in this thesis is in the form of 'narrative literature reviews'. In such reviews the documents selected for inclusion and the manner in which these are analysed are "quite subjective".<sup>25</sup> This places an onus on authors to be careful to avoid a common pitfall, presenting "an opinion oriented argument based upon a myriad of references, rather than objective conclusions based upon the literature reviewed".<sup>26</sup> p103

Nevertheless, narrative literature reviews are an appropriate approach for this thesis. They are useful in pulling information from different sources together, presenting a broad perspective, describing the origin and development of an issue, and discussing theory and context.<sup>26</sup> p103 All these are features of this study.

A 2014 narrative review published in the Journal of the American Medical Association (JAMA)<sup>27</sup> served as a guide for reporting on the searches described below (s2.3.3 to s2.3.7). The JAMA article reported databases searched, range of publication dates for the search, search terms, number of records resulting from the initial search, and number of records retained after review.

### 2.3.2 General approach

Five major sets of searches of online databases were undertaken in order to find the most relevant literature on the respective topics. The first, conducted in August 2011, was concerned with front-of-pack nutrition labelling, and the second (December 2011) with aspects of the trans-Tasman food relationship. The third and fourth, both conducted in 2013, focused on business power and political decision making. The fifth, in September 2018, concerned the Health Star Rating system – the main outcome of the Review that is of interest in this thesis. Other smaller and more specific searches were conducted at various times between 2010 and 2015. Earlier searches were not systematically updated at later dates, but relevant material continued to be added when it came to notice, particularly through Google Alerts.

A very large number of records were located when searching online databases, the great majority not useful for the thesis. A procedure was developed to make the selection of potentially useful records more efficient, in particular by avoiding the need to review, in later searches, records already reviewed earlier. All records from a search were downloaded into an EndNote database (File1) using 'discard duplicates', meaning records were only added to File1 if not previously reviewed. All added records were then reviewed using EndNote's preview facility, which allows easy examination of the title and abstract. All potentially useful records (records that the author considered might be useful in addressing one or more of the research questions) were then added to a second EndNote database (File2). Later these added records in File2 were indexed to relate them to sections of the thesis for which they might be useful. It was only when each section was being written that a decision was made as to which records would be included in the thesis as references.

Particular searches within search sets varied on whether they included all three of the Title, Keywords and Abstract search fields. Variations were generally dependent on the number of records found. If, for example, this number was very large through using all three fields then the search was sometimes restricted to Title only. Because included

fields varied at the search rather than search set level, and given the large number of searches, the details of fields searched are not reported.

The publication dates searched also varied. In all cases the end date was the date of the search. In some cases, however, the start date varied because documents only became relevant after a particular date for historical reasons. In other cases the start date was varied either to increase or decrease the number of records found when this was unmanageably large or disappointingly small. Again, details cannot be generalised to the search set level, and those for individual searches are not reported. However the number of records imported into File2 as potentially useful for the thesis for each search set is reported (s2.3.3 to s2.2.7).

Reference is made below to how particular searches related to particular research questions.

### **2.3.3 Front-of-pack nutrition labelling (FoPL) – August 2011**

This set of searches focused on finding material that might inform Research Question 1 (stakeholder positions on FoPL). Search terms were “percentage daily intake”, “guideline daily amount”, “nutrition keys”, and selected combinations of “front-of-pack”, “nutrition\*”, “traffic light”, “food” and “label\*”. Databases searched were PubMed, FSTA (formerly Food Science and Technology Abstracts), Scopus, Business Source Complete, Academic Search Complete, ProQuest, Science Direct, Kings Fund, Informit and Google Scholar. These searches resulted in the importing of 426 records into File2 as potentially useful for the thesis.

### **2.3.4 The trans-Tasman food relationship – December 2011**

This set of searches sought material to assist in addressing Research Question 2 (influences shaping FoPL decisions). Search terms were designed to find documents relating to Closer Economic Relations (CER) between Australia and New Zealand, regulatory arrangements relevant to food standards in each country, the ‘Food Treaty’ and joint trans-Tasman food standards, and institutional arrangements relating to food

standards in each country. Databases searched were Scopus, ProQuest, FSTA, Medline and Embase. As a result 209 records were imported into File2.

### 2.3.5 Business power and political decision making – January 2013

This search related primarily to Research Question 2 (influences shaping FoPL decisions). Its main purpose was to find literature relevant to Chapter 3. New Zealand's National Bibliographic Database (Te Puna), which lists all books available in New Zealand libraries, was first searched by subject heading in July 2010. The search was then repeated in 2013, both to locate material added since 2010, and to check a wider set of subject headings. Those subject headings resulting in the location of books considered potentially useful for the thesis are listed in Figure 2.1. Together the 2010 and 2013 searches contributed 97 records to File2.

**Figure 2.1 National Bibliographic Database subject headings found useful in searches relating to business power and government decision making**

big business	policy sciences
big business – social aspects	political planning
business and politics	political planning – Australia
chronic diseases – government policy	political planning – Great Britain
corporate power	political planning – New Zealand
corporations – political activity	political planning – United States
corporations – political aspects	political science – decision making
corporations – moral and ethical aspects	pressure groups
corporations – corrupt practices	public policy
government regulation	social policy – decision making
policy networks	

### **2.3.6 Business power and political decision making – April 2013**

This set of searches covered similar topics to the January 2013 book search, and for the same purpose. The numerous search terms included those relating to theories about government and the state such as pluralism, Marxism, and institutionalism, aspects of business power such as structural power and ideological power, business practices aimed at influencing government decisions, and government decision making processes. Databases searched were Scopus, Medline, ProQuest and EBSCO. In all 1827 records were identified as potentially useful for the thesis and imported into File2.

### **2.3.7 The Health Star Rating system – September 2018**

This search was conducted to capture publications relating to the Health Star Rating (HSR) system from January 2015 to September 2018, particularly uptake and effectiveness. It was used to inform both Research Questions 1 and 2. Scopus, EBSCO, PubMed and Informit databases were searched for (“Health Star Rating” AND (Austral\* OR Zealand)). Scopus was also searched for (front OR pack OR label\* AND (Austral\* or Zealand)). As a result, 104 records imported into File2 as potentially useful.

### **2.3.8 Use of the Endnote database in writing the thesis**

Each record in File2 was assigned to one or more EndNote ‘groups’. These groups reflected the many topics covered in the thesis. Examples are “traffic light labelling – UK”, and “Decision to develop HSR [the Health Star Rating system] – industry reactions”. This enabled relevant references to be examined and used as each section of the thesis was written.

## **2.4 Other information sources**

### **2.4.1 Google alerts**

A set of “Google Alerts” was established in 2010 and continued throughout the study. The more important of these are listed with their start dates in Figure 2.2. Some terms were added after 2010 in response to new developments: for example “health star



rating” in 2014. The Google Alerts informed both Research Questions 1 (stakeholder positions on FoPL) and 2 (influences shaping FoPL decisions). Potentially useful references obtained were entered into the EndNote database, assigned to EndNote groups, and used in writing the thesis as described above (s2.3.8).

**Figure 2.2 More important Google Alerts and their start dates**

"review of food labelling" OR "review of food labeling" australia OR zealand (2010)  
"traffic light" OR "traffic lights" "food label" OR "food labels" OR "food labelling" OR  
"food labeling" OR "front of pack" (2010)  
australia "grocery council" OR afgc (2010)  
zealand "grocery council" OR nzfgc OR fgc (2010)  
"blewett review" OR "blewett report" OR "labelling logic" (2011)  
"front of pack" food OR nutrition (2012)  
australia food "star rating" (2013)  
"health star rating" (2014)  
zealand food "star rating" (2014)

#### **2.4.2 Requests for official information**

In April 2012 the author made a request under the New Zealand Official Act 1982 (the OIA) for documents relating to the Review, and particularly front-of-pack nutrition labelling (FoPL), that might inform the research for this thesis. As a result 19 documents were released. Of these, 16 of were considered potentially useful, and were added to the EndNote database used when writing the thesis (File2).

Further documents were obtained from another party that made an OIA request in September 2012. This related to the work of the FoPL Advisory Group established by the New Zealand Government. In this case 28 documents were released, 21 of which were added to the EndNote database. They were then assigned to EndNote groups, and used in writing the thesis as described above (s2.3.8).

### **2.4.3 Membership of the Ministerial Council/Forum**

Tables 6.3 and 6.4 in Chapter 6 provide membership details for the Australia and New Zealand Food Regulation Ministerial Council between October 2008 and October 2009 inclusive. Data were obtained via a personal communication from the Food Regulation Secretariat located in the Australian Government Department of Health and Ageing.<sup>28</sup>

Membership details in Tables 7.1 to 7.5 inclusive in Chapter 7 are for what became the Australia and New Zealand Ministerial Forum on Food Regulation. These were obtained from online lists updated from time to time by the Australian Government Department of Health<sup>28-33</sup> augmented by online searches for election dates when there was a change of government for any of the jurisdictions represented on the Forum.

Table 7.6 in Chapter 7 was compiled from the information in Tables 6.3, 6.4 and 7.1 to 7.5 to provide a summary table.

## ***2.5 Content analysis of submissions to the Review: Study 1***

### **2.5.1 Introduction**

Two content analyses (Studies 1 and 2) of submissions made to the Review were conducted. Study 1 (s6.5.5) contributes to the first part of Research Question 1 (food industry and health sector positions on front-of-pack nutrition labelling issues considered as part of the Review). The methods for Study 1 are described in this section, and those for Study 2 in the next section (s2.6).

### **2.5.2 Obtaining the dataset for analysis**

The initial dataset for use in this analysis was all publicly available second-round submissions to the Review.

Second-round submissions were downloaded to the author's computer from the Review website.<sup>34</sup> All 452 separately-numbered submissions available on the website as at 26 August 2010 were downloaded by that date. Submissions in the form of Word or PDF

documents were directly saved. The text from all other submissions (which were only available online) was copied to separate Word documents.

Three of the 452 submissions were discarded. One was a Word document for which there was a separately numbered PDF document, one was an email that just referred to a separately-numbered submission, and one was an email containing some, but not all, of the same content as a separately-numbered submission. This left 449 submissions available for analysis.

A check was conducted to ensure the accuracy of the downloading process. For online submissions using a supplied form, a page with links to sets of questions answered and documents attached for each submission (the online submission “cover page”) was saved from the Review website to the Word document for that submission. Online submissions were assumed to have been accurately saved when:

- the submission name on the cover page matched the name on the Review website and on each set of saved questions, and
- the sets of questions answered in the Word document matched the sets listed in the cover page, and
- any additional documents referred to in the cover page were matched by saved documents.

Documents other than online forms were assumed to have been accurately saved when:

- the name on the saved submission document(s) matched the name on the Review website, and the number of documents downloaded for the submission (usually one) matched the number of documents for that submission shown on the website, or
- for submission documents without names, the saved submission document(s) matched the document(s) for that submission on the website.

The Review website was checked on 18 November 2010 for any additions to the 449 submissions available on 26 August 2010. for Study 1. Two further submissions were

found, taking the total available for analysis to 451. A check of the website on 3 January 2011 showed no change to these 451 submissions.

The Review Secretariat advised by email on 30 July 2010 that “the majority of submissions from health and commercial organisations are publicly available – most of the confidential submissions [the only ones not available] were made by individual consumers rather than on behalf of particular organisations” (personal communication\*\*). The Secretariat had received “a few” confidential submissions not available on the website.

### **2.5.3 Planning the analysis**

A pilot study was undertaken to identify issues from the submissions that might best inform Research Question 1. A number of submissions were read or skimmed to gain an initial impression of differences in content between submissions from the health sector and the food industry. Fifteen health and 16 food industry submissions were selected as appearing to be useful for developing an initial set of variables. Coding instructions for these variables were progressively developed and refined as each of these 31 submissions was processed. All 449 submissions available at the time were then assigned to one of four sectors: health, food industry, government, and other.

Submissions from the health, food industry and government sectors were coded for the more promising of the initial variables based on skim reading or digital searches for relevant statements. This process showed that the issue as to whether or not a traffic light nutrition labelling system (TLS) should be introduced was by far the dominant food labelling issue dividing the food industry (particularly food manufacturers) from the health sector. Preliminary data available at this point were reported in an editorial in the New Zealand Medical Journal.<sup>1</sup>

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\*\* Permission to use this information was obtained from the Review Secretariat on 13 July 2010. Their assistance is acknowledged.

A decision was made, following the pilot study, to restrict the content analysis for Study 1 to views on the introduction of a TLS. This appeared at the time to be the information most relevant for answering Research Question 1 (stakeholder positions on front-of-pack labelling). Two propositions were selected around which to base the analysis:

Proposition 1: Some form of traffic light front-of-pack nutrition labelling should be introduced;

Proposition 2: Some form of traffic light front-of-pack nutrition labelling would be a good approach to front-of-pack nutrition labelling.

#### **2.5.4 Developing a scheme for coding submissions**

The development of a coding scheme for Study 1 was a lengthy iterative process. Initial coding from the pilot study was progressively refined until it was finalised when the time came for establishing inter-coder reliability. The final scheme is described in Appendix 1.

#### **2.5.5 Importing all submissions into an NVivo file**

Content analysis was conducted using NVivo version 9,<sup>35</sup> which is software designed for assisting with the coding of text.

Submissions were the units of analysis, meaning that a single document needed to be imported into NVivo for each submission. A “submission” was defined as the set of documents recorded as a single submission and assigned a submission number on the Review website. Most submissions consisted of a single document. Thirty-seven submissions comprised more than one document. The following rules were applied in deciding what to include in NVivo in the case of multi-document submissions:

- when only one of the multiple documents addressed issues raised in the Review Consultation Paper, it became the NVivo document for that submission;
- when two or more documents addressed issues raised in the Review Consultation Paper, both or all were included in a single NVivo document;

- position or policy statements attached to a submission were included in the NVivo document for that submission when relevant to the Review;
- all other documents were excluded from NVivo documents. This included copies of submissions to previous reviews or the initial round of submissions for the Review, covering letters, and research reports.

While research reports were excluded from NVivo documents, they were still considered as part of evidence presented in support of positions in later, post-NVivo analysis.

All documents meeting the criteria for import into NVivo were converted into Word documents. Optical Character Recognition (OCR) software was used when required for converting PDF files to Word. Six hand-written submissions were typed up as Word documents. Five of these were transcribed in full. The sixth (submission 715<sup>34</sup>) was long and very repetitive, and was only transcribed for non-repetitive material relevant to the Review.

A Word document for each of the 451 submissions was imported into NVivo. An NVivo search was conducted for the word ‘food’ as a check that NVivo was correctly reading the imported documents. ‘Food’ occurred in all but five of the 451 documents. The original five documents were then checked, and none contained the word ‘food’. This was taken as reasonable confirmation that all 451 documents were being read correctly by the NVivo software.

## **2.5.6 Identifying submissions that referred to traffic light labelling**

A traffic light system (TLS) was defined as a system using green, amber and red symbols to indicate the extent to which a food should form part of a healthy diet.

### *2.5.6.1 Summary of the process*

The process of identifying submissions referring to a TLS is described in sections 2.5.6.2 to 2.5.6.6 below. Because of the complexity of the process a summary is provided in Figure 2.3. The most important point is that 107 submissions were directly coded as

referring to a TLS. A further four submissions were coded as indirectly referring to a TLS, taking to 111 the submissions used for obtaining statistics relating to Propositions 1 and 2.

#### *2.5.6.2 Initial selection of submissions referring to a traffic light system*

The first step in the NVivo analysis was to identify all submissions that referred to a TLS from among the 451 submissions. The word 'traffic' or some variation on the term 'colour coding' that appeared to be referring to a TLS was found in 116 submissions.

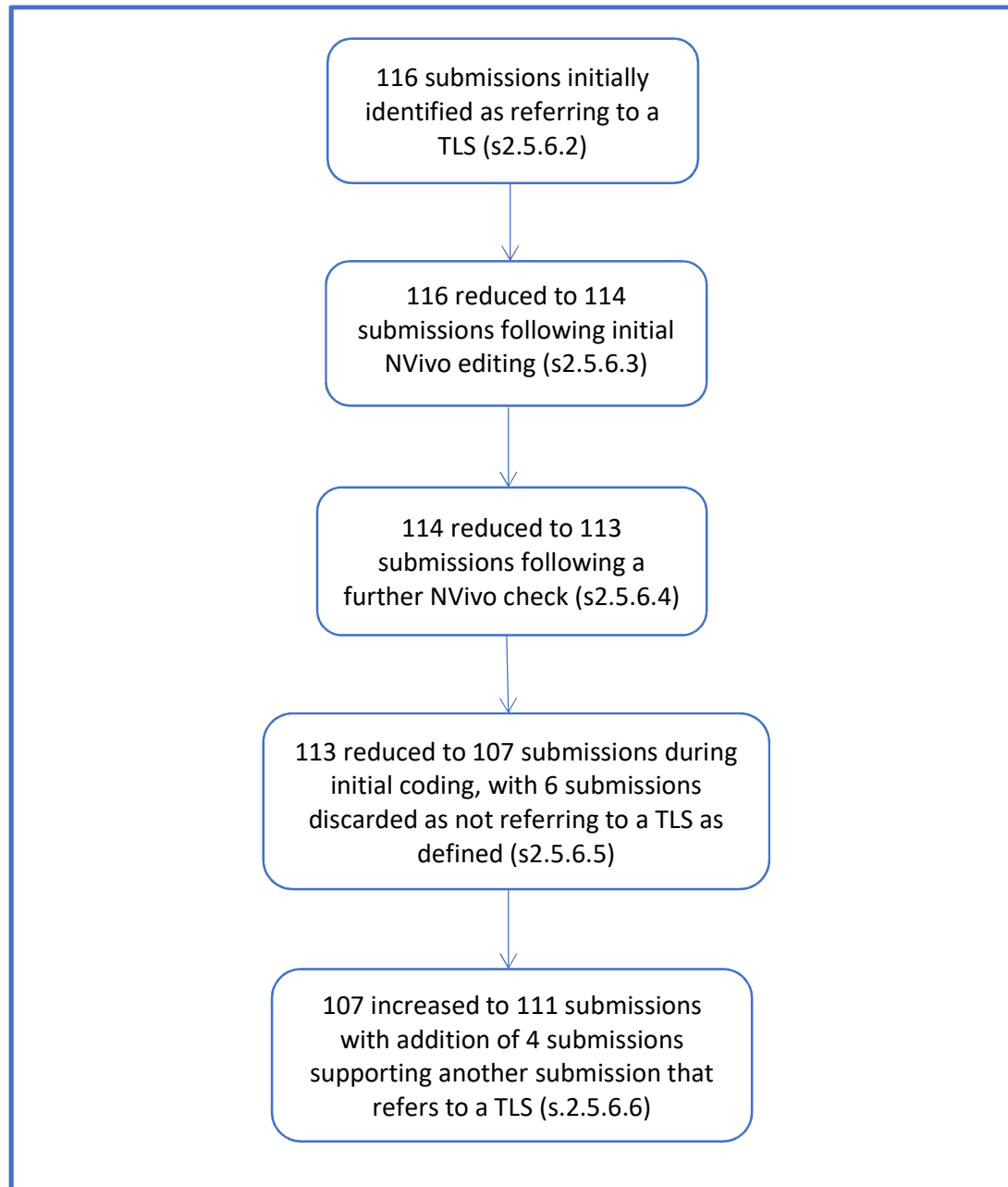
As a further check an NVivo search was conducted on all submissions for occurrences of any of the words 'green', 'red', 'amber' or 'yellow'. All submissions not among the 116 identified as referring to a TLS and containing one of these colour terms were then checked. None was found in which a colour term was used in relation to a TLS.

The search strategy using NVivo therefore worked well. Given that it is hard to see how a TLS could be referred to without mentioning the word 'traffic' or at least one of the traffic light colours, it was assumed that probably all relevant submissions were identified.

#### *2.5.6.3 Editing of submissions referring to a traffic light system*

It became clear, during the NVivo process to identify submissions referring to a TLS, that some of the documents converted into Word from PDF files contained meaningless sections as a result of the OCR software attempting to convert logos, tables and other non-textual material into text. These sections sometimes made coding more difficult. Further, they were undesirable for inclusion in documents to be used in establishing inter-coder reliability. It was also found that superscript numbering for footnotes or endnotes was frequently misread by the OCR software. As a result it was decided to edit the Word documents for the 116 submissions initially identified as referring to a TLS.

**Figure 2.3 Summary of the process for determining submissions referring to a traffic light system**



This editing process involved:

- deleting headers, footers, logos, figures and tables, and inserting a note to indicate where figures or tables had been omitted



- replacing all footnote or endnote indicators in the text with normal script numerals enclosed in brackets
- deleting footnotes or endnotes which included references (the intention being to consult the original document during coding when a footnote or endnote might be relevant)
- replacing the name of the submitter with Xxxxx throughout (to reduce the possibility of coding bias resulting from knowledge about the submitter).

Two submissions were identified during this editing process as not referring to some form of TLS, reducing the submissions for analysis to 114.

#### *2.5.6.4 Checking that relevant text had not been lost during editing*

It was possible that text relating to traffic light labelling had been lost during editing of the 114 submissions. As a check, the same searches conducted in the initial NVivo searches of all 451 submissions (s2.5.6.2) were conducted on the 114. Only one submission, which referred to a TLS only in the title of a reference, was not identified. This submission did not meet the criteria for inclusion and was removed, leaving 113 submissions available for further analysis.

#### *2.5.6.5 Final selection of submissions directly referring to a traffic light system*

Six submissions were discarded from the 113 during initial coding of Proposition 1 (s2.5.7.1) as not referring to a TLS as defined above, leaving 107 submissions available for analysis.

#### *2.5.6.6 Inclusion of submissions 'supporting' other submissions in the analysis*

All 451 submissions were searched using NVivo for occurrences of variations of the words "support(s)" or "endorse(s)" within 10 words of "submission(s)". Such occurrences were located in 50 submissions, 22 of which met the criteria for support or endorsement of another submission as defined in the Coding Scheme ( Appendix 1D). Four submissions not referring to a TLS were identified as expressing full support for one

of the 107 submissions that did. These were treated as indirectly referring to a TLS, and were assigned the same codes for Propositions 1 and 2 as assigned to the submission they supported. This increased to 111 the submissions directly or indirectly referring to a TLS for Propositions 1 and 2.

The subset of 111 submissions referring to a TLS either directly (107) or indirectly (four) was used for investigating support for or opposition to Propositions 1 and 2 in second-round submissions.

## **2.5.7 Coding and establishing inter-coder reliability for Propositions 1 and 2**

### *2.5.7.1 Initial coding of Propositions 1 and 2*

The 107 submissions directly referring to traffic light labelling were initially coded by the author on agreement, disagreement, or neither agreement nor disagreement with Proposition 1 ('Some form of TLS should be introduced'). Coding instructions from the pilot study (s2.5.3) were developed further as coding proceeded.

Submissions coded as neither agreeing nor disagreeing with Proposition 1 were further coded on agreement or otherwise with Proposition 2, that 'Some form of TLS would be a good approach to front-of-pack nutrition labelling'. As an example, statements calling for introduction of a system such as a TLS were coded as agreeing with Proposition 2 but not Proposition 1. Submissions agreeing or disagreeing with Proposition 1 were coded as also agreeing or disagreeing with Proposition 2.

### *2.5.7.2 The process for establishing inter-coder reliability*

Coding performed by an investigator is not ideal.<sup>36</sup> Validity can be comprised through coder bias, whether or not this is intentional.<sup>37, 38</sup> It is highly desirable that coders are unaware of the purposes of a study.<sup>39</sup> In studies using investigator coding such as the present one, a reliability check by at least one independent coder is recommended.<sup>40</sup> This is followed by establishment of inter-coder reliability.<sup>37, 39, 41</sup>

A second coder was recruited through an organisation finding part-time employment for tertiary students. An established process for training the coder and further refining the instructions was followed.<sup>39</sup> A key to this process is the use of feedback from initial coding by the second coder to clarify and improve the coding instructions.

Four documents were given to and discussed with the second coder at the beginning of training. These were:

- information about the project, including an emphasis on the need for coding by the author and second coder to be completely independent (Appendix 1A)
- general coding instructions (Appendix 1B)
- a glossary of terms used in some of the submissions (Appendix 1C)
- an initial coding scheme for the variables to be coded, accompanied by an explanation that this scheme was likely to be progressively updated as a result of feedback during coder training. The final scheme that resulting from this progressive updating is presented in Appendix 1D.

Variables to be coded were processed one at a time. The typical process for each variable was:

- The second coder read the initial coding scheme and discussed it with the author. Changes were made to the scheme when the author determined that the second coder had identified an area where the scheme could be improved.
- The second coder coded a randomly selected set of submissions. The author compared the results to his own initial coding. Differences were discussed, and the coding scheme was updated where required.
- If required, the second coder then coded a second (or third) randomly selected set of submissions and the process was repeated. The process ended when the author concluded that the coding scheme and the second coder's understanding of it were sufficiently developed for final coding to be undertaken.

The final coding scheme for all variables is included as Appendix 1D. Together Appendices 1A through 1D constitute the Coding Protocol used for the final coding.

#### *2.5.7.3 Final coding of Propositions 1 and 2*

The author recoded all 107 submissions on Propositions 1 and 2 using the final coding scheme. A random sample of 50 submissions not used in coder training was coded on both Propositions 1 and 2 by the second coder.

Inter-coder reliability was established using Krippendorff's alpha.<sup>37</sup> The chief drawback of this measure, for many applications, is the difficulty of computation.<sup>36, 40-43</sup> This did not apply to the current study, particularly as only two coders were involved. Alpha was calculated using Microsoft Excel by following a procedure set out by Neuendorf.<sup>39</sup>

Following the establishment of inter-coder reliability the author's coding was used in subsequent analysis for both Propositions 1 and 2. The four submissions not directly referring to a TLS but expressing full support for one of the 107 submissions were then assigned the same codes as that submission, resulting in 111 submissions coded on Propositions 1 and 2.

#### **2.5.8 Coding and establishing inter-coder reliability for sector and sub-sector**

All submissions had been coded by sector and sub-sector during the pilot study (s2.5.3) using four mutually exclusive "sectors": the food industry, the health sector, governments including government departments, and others. Two further sectors were added – 'advertising industry' and 'consumer groups'. The author recoded appropriate submissions to the advertising and consumer sectors, but otherwise the pilot study coding was initially retained.

Inter-coder reliability was assessed at the sub-sector level. The 451 submissions were placed in random order, with the first 300 used for training, piloting and revising the coding instructions, and as a check on the initial coding. The coding instructions were then finalised (Appendix 1D). Both the author and second coder then coded the next 100 submissions using the final instructions, and inter-coder reliability was assessed

using Krippendorff's alpha. The second coder also coded the final 51 submissions. The author then reviewed and made decisions on all submissions on which the two coders differed, in order to produce the final coding used in subsequent analysis. Outside the 100 submissions used to assess inter-coder reliability, it was not considered necessary for the author to recode submissions for which the second coder agreed with the pilot study coding.

#### **2.5.9 Use of research evidence for and against traffic light labelling in submissions**

Submissions from both supporters and opponents of traffic light labelling (s2.5.7) were reviewed to identify all research studies cited by submitters that related to traffic light labelling. An electronic search for these studies using first author and words from the title was then conducted, for all submissions from supporters and opponents, to gather comparative data on the use of research evidence in submissions. Only those studies that could be located on databases held by the University of Otago Library were used in the analysis.

#### **2.5.10 Recording and reporting of the data**

The data collected as described above (s2.5.2 to s2.5.9) were recorded for each submission using an Excel spreadsheet as the database. The tables reporting the data For Study 1 were constructed from this database.

### ***2.6 Content analysis of submissions to the Review: Study 2***

Study 2 (s6.5.6) was designed specifically to address Research Question 2 (influences shaping FoPL decisions) by looking for evidence of selected business practices used by the food industry in submissions to the Review. The dataset was all 451 submissions on the Review website as at 3 January 2011 and assembled in the NVivo file used in Study 1.

Business practices used by industries in response to public health advocacy were identified from a literature review in Chapter 5. Table 5.1 from that chapter was

examined for business practices for which evidence of use could be sought from the submissions. Two of the three practices to reduce the likelihood of statutory regulation (promoting self-regulation, and diverting attention) listed in Table 5.1 were selected for inclusion in Study 2. The third, pre-empting opposing initiatives, was not included as this (the promotion of the industry-sponsored Daily Intake Guide scheme) was reported in the pilot study.<sup>1</sup> Six of the seven framings of issues relating to public health identified in Table 5.1 were also selected for inclusion. The seventh (Industry framing of itself as moderate and reasonable) was not included as it proved too difficult to identify suitable search terms for applying to submissions.

Appendix 2 lists, for each of the eight selected practices, the search terms used to locate submissions that might contain relevant text, and the criteria used in selecting statements from submissions relating to each practice. Codes and coding instructions are also included where relevant. The search terms for each practice were developed from its description in Chapter 5 (s5.3 and 5.4). Selection criteria and any codes for each practice were developed in an iterative process considering both the description of the practice in Chapter 5 and the content of statements located using the search terms.

Search terms were located in submissions using NVivo Version 10.<sup>44</sup> NVivo was also used for recording text from submissions that met the selection criteria.

Resources were not available for employing a second coder, so inter-coder reliability was not able to be established. Because of this, particular care was taken to reduce subjectivity through the wording of selection criteria. These were checked with thesis supervisors.

The quantitative data collected (whether or not a given submission used each frame) were recorded using the same Excel database as for Study 1. The tables reporting the quantitative data for Study 2 were constructed from this database. Qualitative data (text used for particular frames) were reported directly from NVivo.

## **2.7 Interviews with key informants**

### **2.7.1 Introduction**

The first objective in conducting interviews was to provide a second source of data about food industry, health sector and government positions on front-of-pack nutrition labelling (FoPL). This was to help validate the conclusions drawn from the content analyses of the submissions and provide further information for Research Question 1 – stakeholder positions on FoPL. The second objective was to seek information about ways in which submitters and others sought to influence outcomes of the Review (Research Question 2 – influences shaping FoPL decisions). The final objective was to seek views about how health organisations might be more effective when in conflict with business interests based on informant experiences during and following the Review (Research Question 3 – lessons for public health).

### **2.7.2 Selection of interview methods**

Interviews are a key source of case study information, but as “guided conversations rather than structured queries”.<sup>21 p106</sup> They include focused or semi-structured interviews and in-depth interviews. Semi-structured interviews “have a loose structure consisting of open-ended questions that define the area to be explored, at least initially, and from which the interviewer or interviewee may diverge in order to pursue an idea in more detail”.<sup>45 p251</sup> The open-ended questions are likely to focus on a set of questions derived from the case study protocol.<sup>21</sup> In-depth interviews are similarly open-ended, but are less structured and likely to cover fewer issues, but in greater depth. They will often seek the interviewee’s opinions as well as facts. Interviewees may also suggest other sources of evidence relevant to the research questions. They may become less ‘respondents’ and more ‘informants’.<sup>21, 45</sup>

In a case study, informants are selected because of what they might know that would help fill gaps in relevant information, or confirm (or otherwise) information from other sources.<sup>46</sup> Those best placed to inform on these issues were, in the context of this study, senior persons in health or food industry organisations, relevant academics, members

of the Review Panel, and relevant senior government officials. As such they were members of an elite and/or were experts. There are extensive literatures on both elite and expert interviewing,<sup>47, 48</sup> with much in common between the target groups (experts and elites), problems encountered and interview techniques employed.<sup>49</sup> In a case study context the target groups may be referred to as 'key informants'.<sup>21, 50</sup> As such they can be a critical source of information.<sup>21</sup>

Open-ended questioning was selected as the appropriate approach for this study. This has been described as "the riskiest but potentially most valuable type of elite interviewing".<sup>51</sup> Risks include the informant's commitment to particular interests biasing the information provided. Informants can have their own reasons for participating: they have something they want to say, which might include justification of their own actions. This makes it important to validate the information provided, including from other interviews and from documents.<sup>21 p107</sup>

Interviews with key informants particularly lend themselves to face-to-face rather than telephone interactions. In particular, reducing the interaction to the purely verbal makes it difficult to build the rapport that can encourage the informant to provide expansive responses.<sup>48, 50</sup> For this reason a substantial effort was made to arrange face-to-face interviews where possible.

### **2.7.3 Selection of potential informants**

Persons to be approached for interviews were selected on their potential ability, as key informants, to provide information on the 'how' and 'why' of successive events during the Review of Food Labelling Law and Policy. The four groups described below were identified as particularly likely to inform the research questions. Thirty-one requests for interviews were made across the four groups. The outcome of these requests is reported in Chapter 6 (s6.2).



#### *2.7.3.1 Group 1 – supporters and opponents of traffic light labelling*

Interviews were sought with groups or individuals from either the health sector or food industry that made second-round submissions to the Review and that, based on submission content, were coded as being either supporters or opponents of front-of-pack traffic light nutrition labelling in Study 1.

There were seven such submissions from New Zealand traffic light supporters, and five from New Zealand opponents. Two of the seven supporters were not approached as they were based in the South Island, making it costly to arrange an interview for the Wellington-based author. Another supporter was excluded as their submission had been drafted by the author of this thesis. This left four supporters (all from the health sector) who were approached for an interview, together with five opponents (all from the food industry).

A different approach to selecting potential informants was adopted for supporters and opponents in Australia. For expense reasons, only informants in or close to Adelaide, Melbourne, Canberra or Sydney were considered. This still left much larger numbers than could be interviewed. The six supporters from these centres considered, on the basis of their submissions, most likely to provide useful information were approached for an interview. Only one opponent, the Australian Food and Grocery Council (AFGC), was approached. This was partly because most Australian opponents used the same arguments and evidence as the AFGC in their submissions, and partly because experience in attempting to recruit New Zealand opponents for interviewing had proved quite time consuming for little reward.

#### *2.7.3.2 Group 2 – other major public health organisations*

Three major public health organisations – the National Heart Foundation of New Zealand, the National Heart Foundation of Australia and the Australian Chronic Disease Prevention Alliance (ACDPA) made submissions to the Review in which front-of-pack nutrition labelling was substantially addressed, but with no position being expressed on traffic light labelling. All three were approached for an interview.

#### *2.7.3.3 Group 3 – members of the Review Panel*

Four of the five members of the Review Panel were approached for an interview. The exception – on expense grounds – was the member based in Perth.

#### *2.7.3.4 Group 4 – government officials*

Approaches for an interview were made to seven members of the Food Regulation Standing Committee (FRSC), a group of officials that advises the trans-Tasman Legislative and Governance Forum on Food Regulation, a group of Ministers with oversight of the Review. These were the two New Zealand members, the two New South Wales members, and members from the Australian Federal Government, the South Australian Government and the Victorian Government. Interviews with FRSC members from other Australian jurisdictions were not sought because of the extra travel these would incur. One official from the New Zealand Ministry of Health was also approached.

### **2.7.4 Interview documents, interview requests, and protection of informants**

An application outlining the proposed interview methods and participants was made to the University of Otago Ethics Committee. The proposal was approved in December 2011 (Reference Code 11/293).

Initial requests for interviews were made by post for New Zealand informants, and by email for Australian informants. After about a week initial requests were followed up, if required, by emails and then telephone calls. Initial requests comprised an letter and information sheet. For emailed requests these were attachments. Letters and the main body of emails were customised to encourage agreement to participate.

The information sheet advised those approached that the project had been approved by the University of Otago Human Ethics Committee, that they would not be disadvantaged in any way if they declined, and could finish the interview at any time or decline to answer particular questions. They were informed about the protocols for use and storage of audio records, notes from interviews, and any transcripts made from the audio recordings.

Information sheets were customised according to the group into which the informant fell. Appendix 3 shows the information sheet sent to potential New Zealand informants in Group 1.

Those who agreed to participate completed a consent form (Appendix 4) prior to commencement of the interview. This form asked informants to select from one of three options: (a) agreeing to being named in the research, (b) agreeing to being named subject to their approval of any information attributed to them, or (c) remaining anonymous.

#### **2.7.5 Arranging interviews**

Arranging interviews in Australia while based in New Zealand required persistence. Sometimes there was no response to emails. Telephone follow ups often went via personal assistants who needed to consult before making any arrangements. There was time pressure on receiving responses so that an efficient itinerary could be organised, and air tickets purchased.

#### **2.7.6 Conduct of interviews**

All interviews were conducted by the author. Questioning generally followed a format for semi-structured interviews in which broad and open questions were asked initially, followed by prompts and follow-up questions where required.<sup>52, 53</sup> The broad questions were designed to encourage informants to talk expansively and focus on aspects that they wished to emphasise. Prompts and follow-up questions were used to keep information flowing, refocus when required, and elicit specific information sought that did not emerge in response to the broad questions.

The particular questions asked of each informant varied depending on the informant's role or roles in the Review process, their knowledge of what had occurred during that process, and the contribution the interviewer considered they could best make in providing information relevant to the research questions.

An audio recording was made of all interviews. This practice is highly recommended for semi-structured interviews.<sup>53</sup> It allows the interviewer to focus on maintaining rapport with the informant, and provides a much more complete record than would be possible from notes. As well it provides a record of meaning conveyed other than by the words themselves, such as hesitations and laughter.

All information seen as relevant to the research questions was transcribed into a Word document, including non-verbal information that added meaning (for example “laughs”). In some cases this meant transcription of virtually the entire interview, in other cases much less. Transcription by the author occurred as soon after each interview as was practical. Transcription was performed using Express Scribe software ([www.nchsoftware.com](http://www.nchsoftware.com)) which allowed ready stopping, starting and back-tracking of audio recordings.

#### **2.7.7 Recording the interview data and reporting the results**

After all interviews were completed the transcript for each informant was read, with text relevant to the case study sorted into categories. A list of categories was compiled initially, with new categories added as each transcript was processed. The list of categories was finalised. All transcripts were then reviewed again, with material relevant to each category compiled into a summary document, along with the identity of the interviewee supplying the information. A note was made in the draft thesis as to the best location for the information in each category. The summary document was accessed as successive sections of the thesis were written.

### ***2.8 Constructing a framework for ‘aspects’ of power***

The framework involving five ‘aspects of power’ in Chapter 4 was developed using an iterative process. The purpose was to find a way of grouping the strands from each theoretical perspective described in Chapter 3 in a way that was consistent with classifications of theories of the state (s3.2).

The iterative process involved placing each of the strands from Chapter 3 into a group, and redefining each group as the process continued. Once groups had been established with some certainty, some strands not allocated to groups were fitted into an existing group, with the group's definition amended if necessary. The outcome of the process was the five aspects of power.



## Chapter 3

### Power and political decision making: a review of theories

#### **3.1 Introduction**

Politics and the political can be defined as being “concerned with the distribution, exercise and consequences of power”.<sup>54 p3</sup> Understanding how political decisions are made therefore requires an understanding of the nature of power in the state.<sup>55</sup> This chapter is a literature review of theories relating to the power to shape political decisions. Such theories are examined as the first step in addressing Research Question 2: influences shaping front-of-pack nutrition labelling (FoPL) outcomes during and following of the Review of Food Labelling Law and Policy (the Review). There is a particular focus on Australia and New Zealand, the countries to which the Review was directly relevant.

This chapter lays the ground for developing, in Chapter 4, a framework involving five aspects of the power to influence political decisions. This framework is later used in reporting and then discussing the study’s results.

A critical analysis of each theory described in this chapter is outside the scope of this thesis. Instead it is the five aspects of power constructed from the theories which are examined critically in the Discussion (Chapter 8). This is to assess their contribution to explaining the roles played by the food industry and public health advocates in influencing FoPL outcomes arising from the Review. Each aspect provides a different theoretical perspective for examining the evidence.

As Michael Hill observed, studies of the policy process are very often case studies.<sup>55</sup> Many power processes are covert, leaving analysts to make inferences from whatever data they can secure. This poses problems for validating evidence, and leaves analysts vulnerable to the charge that their results have been influenced by their theoretical and

ideological perspectives. Hill suggested that one way to deal with this was to “openly acknowledge the validity of competing frames of reference and then to explore a case study using each as an alternative lens”.<sup>55 p10</sup> Hill cited, as an example, Allison’s study of the Cuban missile crisis.<sup>55, 56</sup> Allison considered the crisis successively from each of three theoretical perspectives. This, Allison wrote, enabled him to “not only probe more deeply into the event, uncovering additional insights; [but also to] demonstrate how alternative conceptual lenses lead one to see, emphasize, and worry about quite different aspects”.<sup>56 pv</sup> Each theoretical perspective, he argued, influenced what was found to be puzzling, what to look for as evidence, and where such evidence might be found.<sup>56</sup>

A similar approach was adopted in a study of British health policy during the 1970s and 1980s.<sup>57</sup> This study considered the usefulness of four theoretical approaches (neo-pluralism, public choice theory, neo-elitism and neo-Marxism) in explaining developments in three policy areas. The authors found that the best approach for explaining these developments varied with the policy under consideration, illustrating the advantage of using more than one lens. Another British study, this time of changes in tobacco policy, came to a similar conclusion by noting the value of a ‘multiple lenses’ approach given that policy outcomes “vary by the stage of the policy cycle, the level of government, and the policy sector”.<sup>58 p46</sup> Such variation suggests there is risk in predicting which theoretical framework might best apply to a particular policy outcome, and that frameworks might differ in their usefulness at different stages of policy development.

A wide net can help in developing varied perspectives about the influences on policy decision making, and avoid what Bernier and Clavier<sup>59</sup> called a linear view of policy making that they found as sometimes evident among public health advocates. Policy emerges, in this linear model, following a process beginning with research evidence and followed by evidence-based policy recommendations. Instead, Bernier and Clavier argued that approaches from political science were needed to understand how public policy is made, and what the levers of influence were on health policies.<sup>59</sup>



As will become apparent in following sections, writers within one theoretical school can be apparently blind to what may seem obvious to those from another. For this reason the lens analogy is a powerful and useful one.

With these considerations in mind, this chapter summarises a number of theories that have implications for the roles played by ‘business’ and other actors in influencing government decisions.

But first, what is ‘business’? In most cases when commercial and public health interests collide over issues of national policy, ‘business’ generally means large, often multi-national companies, as well as industry associations focused on protecting the common interest of companies in a particular sector. In the case of public health concerns about nutrition it will generally be the manufacturers and retailers of the main energy-dense and nutrient-poor products in supermarkets and their industry associations. For the most part there will be large, well-resourced companies or their associations on the other side of the table from public health advocates when both are attempting to influence government decision making. In this thesis ‘business’ or ‘industry’ is shorthand for these powerful business entities.

### ***3.2 Theories of the state***

Most of the theories considered in this chapter have been termed ‘theories of the state’ by a number of writers. These are high-level theories that address the nature and role of government and the relationship between the state and groups within it.<sup>60</sup> This thesis is concerned with theories that apply to those states that are generally termed ‘liberal democracies’. Such states are democracies in that governments are elected in an environment in which there is reasonably free and fair competition between candidates and political parties. They are liberal in that fundamental civil rights are protected, with laws impartially enforced by a legal system and judiciary that is independent of the executive branch of government.<sup>61</sup>

Descriptive or explanatory theories of the state address how states actually work, while normative theories consider how they should work. In practice theories of the state often do both.<sup>61</sup>

Current theories of the liberal democratic state all address in some way the limited nature of electoral democracy.<sup>60</sup> This typically emerges in the form of differing views on the extent to which policy making is 'democratic'. For political theorists Robert Dahl and Charles Lindblom, for example, democracy was a goal, not an achievement. For them democracy required that control over government decisions "is shared so that the preferences of no one citizen are weighted more heavily than the preferences of any other one citizen".<sup>62 p41</sup> They saw this as, at best, only ever approximated in existing political systems, including both Australia and New Zealand.<sup>62, 63</sup>

The relationship between governments and business is an important feature of theories of the liberal democratic state. This relationship is of central importance for the analysis of power in this thesis.

The selection of theories examined in this chapter was influenced by a number of sources, six of which are briefly described here. Each of the six provided a different set of theories, although there was substantial overlap.

- Hill (2009) considered pluralist theory, critiques of pluralism, elite theory, Marxism, corporatism, policy networks, institutional theory and rational choice theory, all under the heading 'policy theories'. He discussed the first four (pluralism to Marxism) in a chapter titled 'theories of power and the policy process'.<sup>55</sup>
- Bernhagen (2007) distinguished five "analytically distinct explanatory frameworks ... that have produced a variety of often conflicting explanations for the successes and failures of business attempts to prevent popular demands from encroaching upon its interests".<sup>64 pp23-4</sup> These were pluralism, neocorporatist theory, elite theory, the ability of business to influence public opinion, and constraints arising from capitalism on the ability of governments to make policy.

- Wilson (2003), in considering (like Bernhagen) the relation between business and politics, discussed pluralism, neocorporatism, and theories about the structural power of business.<sup>65</sup>
- Drysek and Dunleavy (2009) considered four theories – pluralism and subsequent developments including neopluralism, elite theory, Marxism and market liberalism.<sup>61</sup>
- Fenna (2004) also considered four theories – this time pluralism, Marxism, institutionalism and rational choice theory.<sup>60</sup>
- Smith (1993) distinguished three theoretical schools in which analysis of government/group relations has been conducted: pluralism, corporatism and Marxism. He noted that all three paid particular attention to the role of business. For Smith all three approaches were too limited, and he moved on to consider state autonomy and policy networks in order to better understand interactions between governments and groups.<sup>66</sup>

There is substantial commonality among the theories considered by the authors listed above. All the theories identified by these writers are considered below, although not always under the same names. The classification used below describes seven theories relevant to the relationship between the state and business: pluralism and its critics (s3.3), neopluralism (s3.4), theories about elite power (s3.5), Marxism (s3.6), the ‘new institutionalism’ (s3.7), corporatist arrangements (s3.8) and policy and governance networks (s3.9). Two political ideologies – social democracy and neoliberalism – are also described (s3.10).

The theories of the state described in this chapter generally refer to states at the national level. Nation states do not, however, exist in isolation from each other, as is evidenced by the spread of ideologies such as social democracy and neoliberalism across borders. Increasingly, too, national autonomy is being lessened by the spread of international treaties and agreements, such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership signed by 11 countries, including Australia and

New Zealand, in March 2018.<sup>67</sup> Another example, which particularly affects New Zealand, is the Closer Economic Relations Agreement with Australia (s6.3.2).

There is a huge literature and much disagreement on most of the theories considered here. It would be a large task to systematically review the literature on each theory, or to assess the comparative merits of alternative theories. This is not attempted in this thesis. Rather, each theory is considered as a distinct lens with the potential to provide insights into the way in which policy decisions are influenced by both business interests and public health advocates.

### **3.3 *Pluralism and its critics***

Pluralism, as originally conceived by classical pluralists, now has virtually no support as a theory of how the state actually functions. It has, however, assisted in generating a great deal of theorising about the impact of a number of aspects of power on political decision making. It has done this by setting out some clear proposals with which others have felt bound to disagree. This makes it a good place to start.

#### **3.3.1 Classical pluralism**

Robert Dahl was concerned, in the 1950s, to put the study of power on a more scientific basis. He wanted to develop a concept of power that could be operationalised for scientific research.<sup>68</sup> Consistent with the behaviourist paradigm of the time, this meant a focus on observable behaviour.<sup>69</sup> Dahl thought of power as follows: “A has power over B when he can get B to do something that B would not otherwise do”.<sup>68 pp202-3</sup> Dahl proposed that individuals’ interests could be discerned from the policy options they chose, with their policy preferences revealed by their behaviour.<sup>70</sup> This narrow lens does not allow the recognition of non-observable power, and cannot uncover any interests that are not expressed as preferences.<sup>64, 69</sup>

In his 1961 book *Who Governs*<sup>71</sup> Dahl applied this lens to the city of New Haven, home of his university (Yale). He found that there was no single elite dominating municipal political decisions. Instead, power was widely dispersed, with different actors having

influence on different decisions. *Who Governs* was influential in the development of the classical pluralist view that the sources of power over political decisions are widely, even if unequally, distributed. Individuals or groups influence decisions according to their resources including access to decision makers, but with everyone wishing to participate able to make their voices heard.<sup>55</sup>

Classical pluralists were optimistic that the interest group process generally led to democratic outcomes, and did not believe that any one group could exercise extraordinary power.<sup>70</sup> This reflected their belief that people were able to effectively participate in interest group politics when their interests were sufficiently at stake. Business or any other group did not have overwhelming power because of “a deep pool of opinion that can be mobilised against any group that seems to have excessive political influence”.<sup>61 p48</sup>

Classical pluralism was developed in the United States, a country which does not have a dominant central state. Instead at the national level there are competing power centres – the executive, the legislature and the judiciary. Federal and state agencies also compete for power. Further, with weaker political parties and working-class organisations in the United States than in many other developed countries, “interest groups play an important role in the policy process, and the political system is more open to their pressure”.<sup>72 p218</sup> It has been suggested that these factors may make pluralist analysis less relevant in more centralised states, including the United Kingdom.<sup>72</sup>

### **3.3.2 Influencing political agendas**

An important challenge to classical pluralism came in a 1962 paper by Bachrach and Baratz.<sup>73</sup> Their argument was that focusing just on how decisions were made ignored the role of the powerful in restricting the issues on which decisions were actually made. Thus “power is also exercised when A devotes his [*sic*] energies to creating or reinforcing social and political values and institutional practices that limit the scope of the political process to public consideration of only those issues which are comparatively innocuous

to A".<sup>73 p948</sup> This power to keep issues off the political agenda has been referred to as 'blocking power'.<sup>74</sup>

Such power need not be directly exercised. In a study of urban air pollution in the United States, Crenson (1971) showed how local politicians in the steel town of Gary kept air pollution control off the agenda because they feared what US Steel, a major polluter and local employer, might do (moving out of town) if air pollution became an issue.<sup>75, 76</sup>

### 3.3.3 Shaping preferences

British theorist Steven Lukes produced a major challenge to classical pluralism with the publication in 1974 of *Power – a radical view*.<sup>77</sup> Whereas classical pluralists defined A having power over B when A affected B in a manner contrary to B's preferences, for Lukes power was exercised when A affected B in a manner contrary to B's interests.

Lukes accepted that Bachrach and Baratz had made a major advance from classical pluralism, but considered their analysis to still have major weaknesses. He believed it was still too committed to the study of overt behaviour in cases of actual conflict. This, Lukes argued, "is to ignore the crucial point that the most effective and insidious use of power is to prevent such conflict from arising in the first place."<sup>77 p23</sup> For Lukes such power was exercised by influencing, shaping or determining the wants of others. Power could be exercised, he believed, by shaping people's "perceptions, cognitions and preferences in such a way that they accept their role in the existing order of things, either because they can see or imagine no alternative to it, or because they see it as natural and unchangeable".<sup>77 p24</sup> Lukes was thus proposing that what people want may be the product of a political system working against their interests.<sup>77</sup>

Lukes had a major problem that he sometimes acknowledged himself: how do we know what a person's 'real interests' are if they are not expressed as preferences?<sup>77</sup> Consideration of subjective and non-observable 'real interests' rests on a normative theory of human nature beyond the reach of scientific investigation.<sup>64</sup> The implication that a person's 'real interests' might be perceived by enlightened academics, but not by the person themselves, has provoked heavy criticism of Lukes.<sup>54</sup>

### 3.3.4 The demise and abandonment of classical pluralism

Critics of classical pluralism have stressed the ideological influence of business, its structural dominance resulting from control of society's economic assets, and the superior resources it can bring to interest group politics compared with other players.<sup>64</sup>

<sup>72</sup> The failure of classical pluralists to fully acknowledge what many regard as the special place of business in influencing government decisions was a major contributor to the demise of classical pluralism.

Dahl and his collaborator Charles Lindblom signalled, in the 1976 preface of a later edition of their 1953 book *Politics, Economics and Welfare*,<sup>62</sup> some significant ways in which they had moved away from the classical pluralism of the 1950s. First, they emphasised that in polyarchies (representative democracies) a 'structure of inequalities' was perpetuated because the 'better off' were able to participate in politics more effectively than the 'worse off'. Second, they admitted failing to recognise the "privileged participation of business" in politics:

In our discussion of pluralism we made another error ... in regarding businessmen [*sic*] and business groups as playing the same interest-group role as other groups in polyarchal systems, though more powerfully. Businessmen [*sic*] play a distinctive role in polyarchal politics that is qualitatively different from that of any other interest group. It is also more powerful than an interest-group role.<sup>62 pxi</sup>

Their argument was that businesses performed necessary functions in a polyarchal system. As a result, they contended, governments needed to provide business executives with incentives which might include granting them participation in government decision making that affected their interests.<sup>62</sup>

Dahl and Lindblom considered that perhaps the greatest failing in their earlier position on pluralism related to consensus. They noted that an "evident feature of the consensus prevailing in all the polyarchies is that it endorses attitudes, values, institutions, and policies of more benefit to the already favored groups in the society than to the less favored".<sup>62 pxlii</sup> They deplored what they saw as "indoctrinated complacency about existing institutions", leading them to question "the systematic biases ... introduced into

mass communications” resulting from “a near monopoly of radio and television by commercial broadcasting tied to corporate advertising”.<sup>62</sup> pxliii

Smith (1973) came to similar conclusions.<sup>66</sup> He noted that pluralists did not see all groups as having equal power, but believed that power in democratic societies was widely dispersed, with different groups able to influence policy through a variety of different resources. The pluralist focus on observable behaviour led, in Smith’s view, to a failure to pay sufficient attention to the structural and ideological context of political decision making.

For Smith, the most substantial problem for pluralism was the treatment of business as just another interest group. He made five points about business power that he saw as inadequately addressed by pluralists: businesses had ready-made organisations in the form of firms that did not face the same collective action problem as other groups; business had a special relationship with government as a result of its importance in the economy; business had far greater resources than other interest groups; business had advantages through media ownership; and business operated within a generally favourable ideological environment. All five of these points, along with other aspects of business power, are considered in Chapter 4.

### **3.4 The ‘neopluralism’ of Charles Lindblom**

#### **3.4.1 Introduction**

The term ‘neopluralism’ is used in a number of different ways in the political science literature, generally with reference to positions that have been developed in response to perceived deficiencies of classical pluralism.<sup>69</sup> Charles Lindblom is often regarded as its chief exponent,<sup>60, 63, 70, 72</sup> in part as a result of his analysis of business power set out in his 1977 book *Politics and Markets*<sup>46</sup>

Lindblom remained a normative pluralist, seeing pluralism as the ideal context for democratic decision making. By the 1970s he was, however, very pessimistic about how pluralism worked in practice, particularly as a result of what he described as the



privileged position of business. He offered no firm views as to how to achieve the best trade-off between business interests and democracy. He was, however, unequivocal in regarding what he saw as the disproportionate power of business as unacceptable. He famously concluded his 1977 book as follows:

The large private corporation fits oddly into democratic theory and vision. Indeed it does not fit.<sup>63</sup> p356

While Lindblom remained a normative pluralist, his descriptive analysis of how politics works in a liberal democracy or polyarchy took him a long way from classical pluralism, and placed him close at times to both elite theorists such as C. Wright Mills (s3.5.3) and some strands of Marxism (3.6).

Lindblom considered in depth a number of aspects of power that contributed to what he saw as the privileged position of business. For this reason he receives substantial attention in Chapter 4. Lindblom saw business as having political power through the ability to bring substantial resources to bear on contestable decisions, the powerful influence of the business elite, the importance to the economy of decisions made by business executives (s3.4.2) and the power of business to shape a pro-market ideology in the populace (s3.4.3). The last two of these are discussed here in more detail because of their particular relevance to Chapter 4.

### **3.4.2 Lindblom on power arising from the importance of business to the economy**

Lindblom wrote about political systems characterised by what he termed ‘polyarchy’ or rule by many. Countries with such systems are typically called liberal democracies. Core features include citizens choosing their leaders through elections; being free to organise into political groups; and being able to communicate their wishes to political leaders and in other ways influence them.<sup>63</sup>

Polyarchy was, for Lindblom, one way – though an imperfect one – through which ‘popular control’ could be exercised. The market system – again imperfectly – is another. People ‘vote’ through their spending and thus influence what goods and services are

produced. But they do not have full control because of a “defect in market control of the greatest consequence”.<sup>63</sup> Discretionary decisions by business leaders affect issues of significant public interest such as the size and location of businesses, employment, the use of resources, growth and the standard of living, and effects on the environment. This gives them a special and powerful role in influencing government decisions. Lindblom argued that powerful business executives, therefore, do not appear to governments simply as representatives of a special interest but as public agents performing indispensable functions.

Lindblom noted that, in polyarchies, “although governments can forbid certain kinds of activity, they cannot command business to perform. They must induce rather than command.”<sup>63 p173</sup> Inducements include legislation, the development of infrastructure, tax incentives aimed at promoting employment and growth, and ready access at the highest level to make the case for government actions desired by business interests. In Lindblom’s view there is no need for conspiracy theories or allegations about a power elite. “Business simply needs inducements, hence a privileged position in government and politics, if it is to do its job”.<sup>63 p175</sup> The task of government was therefore, for Lindblom, to sufficiently motivate business executives to perform without simply turning policy making over to them.

### **3.4.3 Lindblom on the promotion of business ideology**

Lindblom asked his readers to consider “the possibility that businessmen [*sic*] achieve an indoctrination of citizens so that citizens’ volitions serve not their own interests but the interests of businessmen [*sic*]”.<sup>63 p202</sup> He began by distinguishing between two types of issue on which business executives engage in polyarchal politics. On secondary issues on which there are disagreements among business interests, business executives subject citizens to competitive messages rather than indoctrination. But, on the grand issues on which they agree, they try to indoctrinate citizens. These grand issues include “private enterprise, a high degree of corporate autonomy, protection of the status quo on distribution of income and wealth, close consultation between business and

government, and restriction of union demands to those consistent with business profitability”.<sup>63</sup> p205

The source of business communications intended to mould the volitions of citizens was, for Lindblom, usually obscure. The message may reach the citizen indirectly, such as in a news story, magazine, article, or conversation. In today’s world he would have included the internet and social media. Lindblom regarded these communications as effective in promoting business ideology. Further, he argued, corporate moulding of volitions on grand issues is usually aimed at protecting the status quo, where the media are particularly effective.<sup>63</sup> In polyarchies, Lindblom concluded, “core beliefs are the product of a rigged, lopsided competition of ideas”.<sup>63</sup> p212

In addition to their exercise of ideological power on the grand issues, Lindblom saw business executives as also deciding “on the magnitude and character of the massive attempt at public information and thought control that goes by the name of public relations and commercial advertising”.<sup>63</sup> p155 He also suggested that sales promotion had wider effects than just the sale of particular products. “Inclusive as our information is [he wrote], sales promotion may succeed in ... persuading the populace that buying [goods and services] is the way to popularity, honor, distinction, delight, and security.”<sup>63</sup> p216

Acceptance of business ideology by the general populace was assisted, in Lindblom’s view, by people’s desire to be perceived as a member of the ‘favoured class’. He considered that powerful incentives exist for conformity to the politico-economic beliefs, attitudes and volitions of the favoured class, including “beliefs in private enterprise, private property, corporate autonomy, and opportunities for great wealth”.<sup>63</sup> p226

#### **3.4.4 Conclusion**

Lindblom provided, In *Politics and Markets*, a powerful critique of business power, and in particular its anti-democratic features. He had, In discussing what he described as the privileged position of business in liberal democracies, strong affinities with other

theorists concerned about the relationship between business and government. While some of the language is now dated, *Politics and Markets* remains relevant for the wide range of issues it raises about business power.

### **3.5 Theories about elite power**

#### **3.5.1 Introduction**

The term 'elite' is widely used in the social sciences to refer to functional or occupational groups having high status.<sup>70</sup> Scott (2008) has suggested that if the concept is to be analytically useful it should only be used for those groups having significant power. Thus an occupational group should not be considered an elite merely because its members are highly paid. Scott also argued that it remained important to distinguish elites from social classes. An 'economic elite', for example, should not be confused with 'the capitalist class' since not all owners of the means of production are in powerful positions.<sup>78</sup>

Elites have been defined, in Rahman Khan's (2012) review, as "those who have vastly disproportionate control or access to a resource"<sup>79</sup> p362 and with the resource having 'transferable value'. This qualifies Scott's point about elite membership and high pay, as highly disproportionate wealth (a resource resulting from disproportionately high pay) can be used in various ways to obtain political influence (another resource).

Common to many elite theorists is the view that elites exercise dominant power with respect to government decision making. Beyond this, however, there are wide divergences, including on the issue as to whether elite dominance is good or bad for society.<sup>70</sup>

#### **3.5.2 Elite rule as inevitable and desirable**

Rule by a dominant elite was accepted by many European political theorists up to the early twentieth century as inevitable. Writing in 1896, for example, Gaetano Mosca observed that from the dawn of civilisation there had been two classes of people, the

less numerous rulers and the more numerous ruled.<sup>55</sup> These theorists argued that whatever the ostensible form of government, effective power was always in the hands of a small elite.<sup>61</sup> Further, elite rule was seen by some as not only inevitable, but desirable. This was sometimes an anti-democratic reaction to the rapid changes of the nineteenth century including industrialisation and the extension of the vote to the masses.<sup>61</sup>

### **3.5.3 Elite rule as anti-democratic and undesirable**

Elite theory took a very different turn after crossing the Atlantic. American elite theorists came to adopt an empirical approach focused on examining the role of elites in government and society. Rather than accept or celebrate elite domination, some such as C. Wright Mills saw this as a democratic imperfection.<sup>61, 79</sup> In his highly influential 1956 book *The Power Elite*, Mills argued that, in the United States following World War II, an elite comprising leaders of central government, large corporations and the military exercised what was, by historical standards, extraordinary power. He defined this elite as “those political, economic, and military circles which as an intricate set of overlapping cliques share decisions having at least national consequences”.<sup>80 p18</sup> Members of this elite made decisions of huge consequence both within and beyond the United States. For example, the “decisions of a handful of corporations bear upon military and political as well as upon economic developments around the world”, while the “decisions of the military establishment ... grievously affect political life as well as the very level of economic activity.”<sup>80 p7</sup>

Mills suggested that members of the power elite shared a similar social and educational background “leading to the fact of their easy intermingling”.<sup>80 p19</sup> This view has, however, been challenged by those who see ties between members of economic and other elites as being functional rather than social, with shared policy interests and concerns that bringing members of different elites together.<sup>64</sup>

Theorists such as Mills, concerned about the implications of elite power for democracy, provide a major challenge to pluralist assumptions about the ability of a wide range of

interest groups to influence government policy. They point to features in liberal democracies where they see elites as exercising inordinate power. These include the ability to provide large political donations,<sup>81</sup> ownership of mass media resulting in political bias, and the exclusion from influence of groups threatening established elites.<sup>70</sup>

#### **3.5.4 Conclusion**

Theoretical writing on elite power has tended to be more descriptive than explanatory. Much is atheoretical, being mainly concerned to refute pluralism empirically.<sup>82</sup> Frequently it has been both country- and time-specific. President Eisenhower, for example – influenced by Mills – famously warned of the threat to democracy posed by the ‘military-industrial complex’.<sup>64</sup> This is of questionable relevance in Australia and New Zealand today.

### **3.6 *Marxism and neo-Marxism***

#### **3.6.1 Introduction**

Several commentators have noted that Lindblom, with his emphasis on the dominant position of business, provides a bridge between pluralism and Marxism.<sup>60, 72</sup>

The Oxford English Dictionary describes ‘Marxism’ as “the political and economic theories propounded by Marx together with Friedrich Engels, later developed by their followers to form the basis for the theory and practice of communism”,<sup>83</sup> and ‘neo-Marxism’ as relating to “forms of political philosophy which arise from the adaptation of Marxist thought to accommodate or confront modern issues such as the global economy, the capitalist welfare state, and the stability of liberal democracies”.<sup>84</sup> Neo-Marxism comes in many forms, and it has been noted that “it is no longer clear where Marxism ends and other forms of radical analysis begin”.<sup>57 p27</sup> Explicit in the definition of Marxism and implicit in that of neo-Marxism is a reference back to the writings of Marx and Engels. These writings are incomplete (Marx died before he could fully outline his theories), and are often ambiguous and inconsistent.<sup>85, 86</sup> Of particular relevance

here is that, as Barrow (2000) noted, “one cannot find a completed theory of the state in the writings of Marx and Engels”.<sup>85 p87</sup> This has resulted in conflicting interpretations of Marxist theory by writers appealing to different sources from within the founders’ written works. As a result, as Barrow put it, “as long as Marx’s writings remain a key referent for the development of state theory, it will be necessary to recognize that a range of positions is defensible from within the intellectual canon and that the canon itself provides no basis for arbitrating among the competing theories”.<sup>85 p114</sup>

Rather than seeking, then, to try and determine a Marxist or neo-Marxist position on how business and other interests influence government decision making in liberal democracies, three contrasting interpretations are discussed below: Miliband’s ‘instrumentalism’, Block’s structuralist approach, and Gramsci’s concept of ‘cultural hegemony’.

### **3.6.2 Miliband and ‘instrumentalism’**

British Marxist Ralph Miliband, In his 1969 book *The State in Capitalist Society*,<sup>87</sup> began by challenging the pluralist view of the modern capitalist state. He acknowledged that pluralists might concede that there were elites in particular policy areas, but not that there was a single elite that could be considered the dominant or ruling class. One of the main purposes of Miliband’s book was to show this view was wrong. Miliband’s alternative – that the state serves as an instrument to promote the interests of a ruling class – is commonly referred to as ‘instrumentalist’.<sup>60, 61, 66</sup>

Miliband began his challenge to pluralism by quoting a famous statement in the *Communist Manifesto*: “The executive of the modern state is but a committee for managing the common affairs of the whole bourgeoisie”.<sup>88</sup> He noted that this concept emerges repeatedly in the work of both Marx and Engels, whom, he believed, “never departed from the view that in capitalist society the state was above all the coercive instrument of a ruling class, itself defined in terms of its ownership and control of the means of production”.<sup>87 p5</sup> Miliband, in supporting this view, was prepared to grant there is a plurality of economic elites with distinct groupings and interests in advanced

capitalist societies. He argued, however, that this does not “prevent the separate elites in capitalist society from constituting a dominant economic class, possessed of a high degree of cohesion and solidarity, with common interests and common purposes which far transcend their specific differences and disagreements”.<sup>87 pp47-8</sup>

Miliband’s position, reflecting the views of Marx and Engels to which he draws attention, is that business people in effect rule but do not govern. He noted that while a substantial minority of politicians in advanced capitalist countries have a business background, business people constitute only a small minority of the state elite as a whole. Nevertheless politicians and senior civil servants, irrespective of any business background, deliver a political system that strongly favours business interests. Miliband attributed much of this to business people belonging, “in economic and social terms, to the upper and middle classes – and it is also from these classes that the members of the state elite are predominantly, not to say overwhelmingly, drawn”.<sup>87 p59</sup>

### **3.6.3 Block – a structuralist approach**

American political scientist Fred Block, in a 1977 paper, aimed to elucidate a ‘structural’ theory that explained why the ‘ruling class’ (capitalists) do not need to be part of government in order for governments to preserve and promote a capitalist state. He contended that governments are forced to concern themselves with the maintenance and enhancement of a favourable investment climate for capitalists because their electoral prospects depend on it.<sup>89</sup> Here Block is on similar ground to Lindblom (s3.4.2).

Block argued that democratic governments in capitalist states – regardless of their ideology – were dependent on the maintenance of a reasonable level of economic activity. This was required to generate sufficient tax for the government to function effectively. Further, a drop in the level of economic activity would result in unemployment and a shortage of key goods, damaging the government’s prospects for re-election. Block continued:

In a capitalist economy the level of economic activity is largely determined by the private investment decisions of capitalists. This means that capitalists ... have a veto



over state policies in that their failure to invest at adequate levels can create major political problems for the state managers. This ... means that state managers have a direct interest in using their power to facilitate investment since their own continued power rests on a healthy economy.<sup>89 p15</sup>

Block, like Lindblom, acknowledged that business (in his terms 'the ruling class') acted as an interest group. As he described it:

Capitalists, individually and in groups, apply pressure on the state for certain kinds of lucrative contracts, for state spending in certain areas, for legislative action in their favor, for tax relief, for more effective action to control the labor force, and so on.... [They] attempt to assure responsiveness by the state through various means, including campaign contributions, lobbying activities, and favors to politicians and civil servants.<sup>89 p13</sup>

But Block stressed that such actions merely provide "the icing on the cake of class rule",<sup>89 p14</sup> and even in their absence policy makers would advance policies favouring the interests of 'the ruling class'.

As did Lindblom (s3.4.3), Block recognised the power of ideology (in his words 'bourgeois cultural hegemony') in shaping an environment favouring the interests of capital. He believed there must be specific structural mechanisms making 'ruling ideas' consistent with bourgeois 'class rule'. He does not explain these mechanisms in his 1977 essay. Instead, for a Marxist perspective on the power of bourgeois ideology we turn to Antonio Gramsci.

### **3.6.4 Gramsci and cultural hegemony**

Antonio Gramsci was one of the most influential Marxist theorists of the twentieth century, particularly in relation to his views on 'cultural hegemony'.<sup>90-93</sup> His writings have been described by Lears (1985) as "voluminous, chaotic, and mostly untranslated [from Italian]".<sup>90 p568</sup> The primary source used here is a collection of selections from his notebooks written from prison in Mussolini's Italy.<sup>94</sup>

According to Lears, none of Gramsci's translated writing contains a precise definition of cultural hegemony.<sup>90</sup> Often quoted is his description of hegemony as "the 'spontaneous' consent given by the great masses of the population to the general direction imposed on social life by the dominant fundamental group ... [resulting from the dominant group's] position and function in the world of production".<sup>94 p12</sup> This domination came from a changing mix of both consent and coercion.<sup>90</sup> In one passage Gramsci referred to the State as "the entire complex of practical and theoretical activities with which the ruling class not only justifies and maintains its dominance, but manages to win the active consent of those over whom it rules".<sup>94 p244</sup> The State, through institutions such as the schools and courts, comes together with private initiatives to "form the apparatus of the political and cultural hegemony of the ruling classes".<sup>94 p258</sup> This has much in common with Lindblom (s3.4.2).

The consent of those outside the dominant group that mattered for Gramsci related to existing arrangements about the distribution of goods. He used 'consent' broadly, meaning by it internalisation or acceptance of "the values, norms, perceptions, beliefs, sentiments and prejudices"<sup>90 p569</sup> supporting these arrangements. Consent by the ruled was essential for what Gramsci termed the "ethical State".<sup>94 p258</sup> This meant that for Gramsci the struggle to establish an alternative Marxist hegemony was as much a struggle over consciousness as over ownership of the means of production.<sup>91</sup>

Gramsci's views on cultural hegemony are relevant to the position occupied by neoliberalism in modern capitalist economies (s3.10.3). His theoretical framework has been used, for example, in arguing that a neoliberal hegemony has impacts on Australian education,<sup>95</sup> and in considering how the dominance exercised by 'global finance' might be challenged.<sup>96</sup>

### **3.6.5 Marxism today**

A number of writers have suggested that Marxist theory has been losing its appeal in recent decades. Reasons given include including developments relating to the welfare state, the declining power of trade unions, the demise of Soviet communism and the

moves toward capitalism in China.<sup>55, 61, 85, 91</sup> Continuing changes in capitalist societies since the nineteenth century make life increasingly difficult for theorists who attempt to justify their views by appeals to the writings of Marx and Engels. Further, the appeals by Marxist and neo-Marxist writers to authorities from the past does not sit well with attempts to base social and political science on evidence. Nevertheless Marxist writing provides a rich pool of ideas relevant to the analysis of political power that are taken up in Chapter 4. The three theorists considered above provide examples.

### **3.7 The new institutionalism**

#### **3.7.1 The emergence of the ‘new institutionalism’**

Institutionalism (old and new) comes in many guises, but all share the claim that institutions matter when it comes to explaining political behaviour.<sup>97</sup>

An institutionalist approach to the study of government and politics dominated political science before the rise of behaviourism following World War II.<sup>54 p11</sup> The focus was on formal rules and organisations, and on official government structures.<sup>98</sup> This older tradition of institutional analysis had largely disappeared from political science by the 1960s to be replaced by behaviourism (a feature of classical pluralism) and, by the 1980s, rational choice theory.<sup>98</sup> Both of these emphasise the role played by actors in political decisions. A ‘new institutionalism’ developed from around the 1980s in response to this emphasis by stressing, in Hay’s (2002) words, “the mediating role of the *institutional* contexts in which events occur” [Hay’s italics].<sup>54 p11</sup> Political conduct is assumed to be shaped profoundly by these contexts.

#### **3.7.2 The ‘institutions’ of the ‘new institutionalism’**

The institutions of concern to theorists within the new institutionalism are much wider than just formal political organisations, structures and rules. The new institutionalists have expanded their interests to include the informal conventions of political life. March and Olsen (1984), in an early review of the new institutionalism, argued that it was not a theory, but “simply an argument that the organisation of political life makes a

difference”.<sup>99 p747</sup> Lowndes (2010) similarly concluded that it was misleading to describe new institutionalism as a theory, preferring to see it as an ‘organising perspective’. She noted, however, that the diverse approaches promoted by new institutionalists were typically driven by theory.<sup>98</sup>

Positions such as that taken by March and Olsen broadened the scope of what institutional approaches could cover. Hill (2009) noted that these approaches included “a very wide range of potential constraints [on political action], from constitutions and laws, through institutional self-interest and standard operating procedures to dominant ideologies”.<sup>55 p80</sup>

Ideologies as constraints on political action were discussed by Hall (1993) in terms of ‘policy paradigms’.<sup>100</sup> These, according to Hall, are ideologies or systems of ideas that provide the dominant or only discourse for discussion of policy options in a particular policy domain. They permeate political institutions to the extent that their concepts and language are treated as ‘normal’. The examples discussed by Hall, who was considering British economic policy during the 1970s and 1980s, are Keynesianism and its successor, monetarism. Béland (2005) made a similar argument, seeing policy alternatives as rooted in policy paradigms, with proponents framing their policy preferences within stable ideological frameworks.<sup>101</sup> Hill (2009) noted that some, but not all, scholars have embraced this extension of institutionalism to include policy paradigms.<sup>55 p78</sup>

History – the timing and sequence of past events – is another powerful constraint on political action that matters for new institutionalists.<sup>54</sup> Future possibilities are constrained through ‘path dependency’. Political frameworks and policies from the past shape the context in which decisions are made in the present. This, together with the rigidity of institutions, meant for Hay (2002) that the new institutionalism is better at explaining stability than change. He noted that, by emphasising institutions as constraining the bounds of political possibility, the new institutionalism “is highly sensitive to the difficulties in bringing about significant institutional and programmatic change and to the irreversibility of paths once taken”.<sup>54 p107</sup> When change does come, however, it can be substantial (‘punctuated equilibrium’). Hay argued that, because of

the emphasis on processes of institutionalisation and normalisation, institutionalist theory is poor at accounting for change, “tending merely to invoke (untheorised) exogenous shock”.<sup>54 p15</sup>

### **3.8 Corporatist arrangements**

#### **3.8.1 Corporatism and corporate arrangements**

The term ‘corporatism’ began life in the late nineteenth century as the name given by some to an ideal form of society organised to eliminate conflict and assign everyone rights and duties proportionate to the functional importance of their role. European fascist states in the twentieth century claimed to embody this ideal, giving the term negative connotations for both liberals and socialists.<sup>102</sup> Corporatism has, more recently, come to refer to voluntary cooperation to achieve broad objectives among the state and major interest groups, notably business organisations and unions.<sup>65 p103</sup> This has advantages for included parties, but it disadvantages excluded groups such as those concerned with the environment, human rights or inequality. Monopolistic business and union organisations, legitimised by the state, have substantial power in shaping government policy because they are able to implement their part of agreed decisions. Governments, in turn, are freed from much of the burden of implementing policy.<sup>66</sup> By the later part of the twentieth century a number of European liberal democracies – including the Netherlands, Norway, Sweden, Denmark and Austria – were being described as corporatist.<sup>65</sup>

After surveying the history of the term ‘corporatism’ and noting its ambiguity, Crouch and Dore (1990) proposed referring instead to ‘corporatist arrangements’. They defined a corporatist arrangement as:

An institutionalized pattern which involves an explicit or implicit bargain ... between some organ of government and private interest groups ..., one element in the bargain being that the groups receive certain institutionalized or *ad hoc* benefits in return for guarantees by the groups’ representatives that their members will behave in certain ways considered to be in the public interest.<sup>102 p3</sup>

Corporatist arrangements are usually made to achieve economic objectives. As a result they usually include business as a partner. Three levels at which business can be involved can be distinguished – national, sectorial, and that of individual firms.<sup>66</sup> Corporatist arrangements at the national level have involved government and peak business and union organisations (for example Sweden and Austria), or between government and business only (Japan and South Korea).<sup>61</sup> At the sector level there are numerous examples of corporatist arrangements, including in the United Kingdom and the United States. In the United Kingdom, for example, even during the Thatcher government there were strong linkages between government and business in the microelectronics and oil industries, despite that government's enthusiasm for market forces.<sup>66</sup> In the United States the Department of Defense has worked closely with the computer and semiconductor industries<sup>66</sup>

Corporatist arrangements, by giving business a major say in policy development, might at first glance seem to reinforce business power. This may not be so. Fenna (2004) has argued that corporatist arrangements have been strongest in countries characterised by social democratic governments and strong labour movements, leaving business with little choice. Thus corporatism can be seen “as a rare moment when the working class has achieved sufficient organisational and political strength to enjoy some equality of representation with business in the ‘corridors of power’”.<sup>60 p158</sup>

### **3.8.2 Corporatist arrangements in Australia and New Zealand**

Australia has not had a history of corporatist policy making, even though for many years it has had a relatively strong labour movement linked with a supportive political party that spent substantial time in office.<sup>60</sup> The closest Australia arguably came to national corporatist arrangements was the Accord signed between the Hawke government and the Australian Council of Trade Unions (ACTU) in the 1980s. In return for a place at the policy table and agreement to a wages policy the unions received a range of agreed benefits. This was very different to the European tripartite model in that it did not include business.<sup>60</sup> Another example, this time involving a single company – the Broken

Hill Propriety Company (BHP) – and relevant unions, was the Hawke government's steel plan.<sup>103</sup>

Like Australia, New Zealand has not had tripartite corporatist arrangements such as those in Sweden and Austria. New Zealand's arbitration system of labour relations from the 1890s to enactment of the Employment Contracts Act in 1991 has, however, been described as corporatist.<sup>104</sup>

### **3.8.3 Conclusion**

Corporatist arrangements occur when governments form close relationships with one or perhaps two partners, usually business and/or unions. These partners are granted a substantial say in policy making, to the detriment of excluded parties. Such arrangements do not currently exist in Australia or New Zealand, although there are some historical examples.

## ***3.9 Policy networks and governance networks***

### **3.9.1 Policy networks**

#### ***3.9.1.1 Introduction***

The concept of 'policy networks' has been used in a wide variety of ways in attempts to explain the public policy process.<sup>105</sup> Policy networks, as the term is used here, are types of relationship between interest groups and government. Marsh and Rhodes (1992) have described them as being at a different level of analysis from theories concerned with the distribution of power. They argued that "the concept of 'policy networks' ... must be used in conjunction with one of the several theories of the state in order to provide a full explanation of the policy process and its outcomes".<sup>106 p268</sup>

#### ***3.9.1.2 Types of policy network***

As described by Blanco and colleagues (2011), the 'policy networks' approach has drawn on concepts developed from the 1960s such as 'policy communities', 'iron triangles' and

‘issue networks’. The central claim is that policy making is not controlled by a monolithic state, but takes place in policy subsystems where diverse actors come together as policy networks to deal with specific policy issues.<sup>107</sup>

A number of policy network typologies have been developed using dimensions such as “openness/closeness, the number of actors, the degree of diversity/symmetry among actors, the power structure or the degree of consensus/conflict”.<sup>107 p300</sup> British theorist Rod Rhodes proposed one of the most well-known typologies in the 1980s.<sup>108</sup> The main distinction in the Rhodes model is that between policy communities and issue networks. A description of each of these illustrates the breadth of the policy networks concept.

#### *3.9.1.3 Policy communities*

A ‘policy community’, as described by Fawcett and Daugbjerg (2012), is a network in which a relatively small group of actors share a policy agenda and have useful resources, but are dependent on cooperation with others to achieve their aims. Power is exercised through exclusion of other actors. Each policy community evolves and institutionalises its own approach to problems.<sup>109</sup> Hill (2009) summarised policy communities as having shared values and frequent interactions, with the ability of group leaders to regulate the exchange of resources among members, and a relatively equal distribution of power.<sup>55</sup>

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Policy communities are a common feature of public health advocacy. In Europe, for example, more than 50 alliances, coalitions and networks were found to be engaged in drugs policy advocacy in 2012.<sup>110</sup>

#### *3.9.1.4 Issue networks*

‘Issue networks’, as described by Fawcett and Daugbjerg, are characterised by diverse membership and a lack of consensus on both procedures and broader social, political and economic objectives.<sup>109</sup> They have been summarised by Hill as being large and diverse, with fluctuating levels of contact among members, lower levels of agreement



than for policy communities, an inability to share resources, and unequal power among network members.<sup>55 p56</sup>

#### *3.9.1.5 The Advocacy Coalition Framework and policy change*

The Advocacy Coalition Framework (ACF) was originally developed in the 1980s by Sabatier and Jenkins-Smith in the context of the political system in the United States. It has subsequently been revised in an attempt to make it more widely applicable.<sup>111</sup>

The ACF, as described by Sabatier and Weible (2007), starts with the assumption that most policymaking occurs among actors within a policy subsystem. These actors include legislators, agency officials and interest group leaders, as well as researchers and journalists specialising in the policy area. Researchers are included because it is assumed that scientific and technical information is important in shaping the beliefs of policy actors, making those having such information among the central players in the policy process.<sup>111</sup> Policy subsystems are much like issue networks in the Rhodes model (s3.9.1.4).

Sabatier and Weible proposed that “the best way to consider the multiplicity of actors in a [policy] subsystem is to aggregate them into ‘advocacy coalitions’”.<sup>111 p192</sup> Advocacy coalitions are assumed to form within policy subsystems as policy participants seek allies, share resources and develop complementary strategies to achieve their policy objectives. Allies are sought from among policy participants who share core beliefs or ideologies.<sup>111, 112</sup> This puts advocacy coalitions towards the policy community end of the Rhodes continuum (s3.9.1.3).

Tobacco policy has been used by Drysek and Dunleavy (2009) to illustrate a policy subsystem in which there are two competing advocacy coalitions, each united by core beliefs (values, assumptions and perceptions). One coalition might include medical and other health organisations including government departments, insurance companies, advocates for those suffering from smoking-related diseases, unions representing workers in bars and restaurants, and tobacco-control legislators. Another might include

the tobacco industry, tobacco growers, sports bodies benefiting from tobacco sponsorship, advertising groups, and associations of bar and restaurant proprietors.<sup>61</sup>

Of particular interest for this thesis is what the ACF has to say about policy change. Four paths to policy change have been identified by Weible and colleagues (2009).<sup>113</sup> First, events or shocks external to the policy subsystem, such as changes in economic conditions or public opinion, can foster change by shifting the balance of resources between competing coalitions and by changing beliefs. Second, 'policy-oriented learning' can occur as a result of experience or new information (hence the importance of research findings). The third path to policy change is internal subsystem events such as a failure in current practices. The fourth is change resulting from negotiated agreements involving coalitions within the subsystem that have incentives to negotiate seriously because of a 'hurting stalemate'.<sup>111, 113</sup>

### **3.9.2 Network governance and governance networks**

The term 'governance' is used in many different ways, and requires qualification to make it useful.<sup>114-116</sup> The concern in this thesis is with governance in public policy and public administration. In these areas governance is concerned with how not just the state but also markets and civil society have prominent roles in the governing of modern societies.<sup>117</sup>

Rhodes (2007), defined governance in public policy and administration as "governing with and through networks".<sup>114 p1246</sup> This definition has been criticised as too narrow.<sup>115</sup> To be fair to Rhodes, however, he wrote that the term was best used with a qualifying adjective, and that he was talking about 'network governance'.

A wider definition of governance in public policy and administration has been proposed by Shaw and Eichbaum (2011):

[G]overnance can be used to describe constellations of state and non-state (or civil society) actors within the policy process, the formal and informal institutional arrangements within which they interrelate, the kind and quality of those interrelationships, and the kinds and quality of policy outcomes that result.<sup>116 p298</sup>

Shaw and Eichbaum distinguished three modes of governance. First was a hierarchical model of governance with central government at the top. Second was governance through networks (the Rhodes perspective). Third, governance through markets involved a move from what had been previously been in the public domain to the private sector, as with the privatisation of state assets.<sup>116</sup>

Governance through markets involves the involvement of business in setting policy for and/or delivering public services or products in those areas where government has a role in seeing the public interest is protected. Public-private partnerships and the privatisation of services such as electricity and water are examples. Regulation is typically the tool relied on by governments to ensure socially appropriate outcome from governance through markets. This may take the form of statutory regulation, co-regulation, or self-regulation in which governments trust 'the market' to ensure socially desirable outcomes. Market governance thus involves at least two sets of actors (government and business). Even where governments leave it to business to make decisions affecting the welfare of citizens through self-regulation, this a government decision about governance, and has been called 'governing at a distance'.<sup>118 p1407</sup> In most cases, however, both government and business interact with each other as part of a governance network.

As used in this thesis 'governance networks' refer to Shaw and Eichbaum's second and third modes of governance. 'Governance power' is treated as a form of network power accruing to non-government actors who have a formal role in developing public policy, or administering or delivering public services.

### ***3.10 Political ideologies: social democracy and neoliberalism***

#### **3.10.1 Introduction**

The concern in this thesis is with states that are generally termed 'liberal democracies' (s3.2). Such states are characterised by reasonably free and fair elections, the protection

of civil rights, laws that are in general impartially enforced, and an independent judiciary.

Most, if not all, states that could be called liberal democratic can be classified using four categories described by Saint-Arnaud and Bernard (2003)<sup>119</sup> as part of a stream of research beginning with Esping-Andersen (1990).<sup>120</sup> These are Liberal, Social-Democratic, Conservative and Latin. Countries with a liberal regime, in this typology, “rely first and foremost on the market economy to meet everyone’s needs, and they avoid as much as possible social programme expenditures, which would threaten economic performance (particularly because of disincentives to work).”<sup>119 p504</sup> In social-democratic regimes, “inequalities produced by the labour market are reduced by social programme expenditures, which by design apply universally ..., [while also fostering] economic growth (for instance through investments in education and vocational training)”.<sup>119 p503</sup> Conservative regimes focus on social insurance to protect workers and their families, typically through social security contributions. Finally, Latin regimes tend to focus on the family and family bread-winners as the basic source of support.<sup>119</sup>

New Zealand and Australia have, in recent decades tended toward either liberal or social democratic political arrangements.<sup>121-125</sup> Conservative and Latin regimes are not discussed further.

Social democratic and liberal governments typically differ in ways important to the relative power of the business community and public health advocates. This makes differences between them highly relevant to Research Question 2 (influences shaping FoPL decisions).

### **3.10.2 Social democracy**

#### *3.10.2.1 Introduction*

‘Social democracy’ first emerged at the beginning of the twentieth century from the views of theorists such as Karl Kautsky and Eduard Bernstein who accepted the Marxist goal of a classless and prosperous society from which capitalism had disappeared. They

differed from Marxists, however, in the means, seeking evolutionary rather than revolutionary change. As well, they differed in accepting democratic values rather than the rule of the proletariat. This approach came to be promoted by the Fabians in England.<sup>60, 61</sup>

The term 'social democracy' came to acquire its modern meaning in the 1950s. At that time the Swedish and German workers' parties, both called 'social democratic', abandoned the goal of replacing capitalism, and announced they planned to achieve their aims within a predominantly private enterprise economy. In 1959 the German Social Democrats even adopted the slogan 'As much market as possible; as much state as necessary'. From then 'social democratic' came to be used to describe moderate centre-left politics.<sup>126</sup>

#### *3.10.2.2 Keynesian demand management*

The emergence of Keynesian demand management gave social democratic governments a valuable tool in pursuing their goals. This involved increasing government spending when the economy was weak in order to stimulate demand, thus protecting jobs. When demand was excessive governments would reduce spending and pay off debt. This reduced aggregate demand and helped avoid inflation. The model, to work, required governments to have large budgets in order to have the intended effects on the national economy. Large budgets meant higher levels of taxation and the ability to fund the welfare state.<sup>126</sup>

The social democratic model worked successfully for several decades following World War II. During this period, "virtually all nations embraced interventionist or state-managed capitalist regimes and enjoyed fast growth, stable prices and rising equality".<sup>127 p319</sup> Keynesian demand management protected ordinary people from market fluctuations that threatened employment and brought instability to their lives.

New Zealand was among the countries where social democracy flourished. The election of the first Labour government in 1935 heralded a raft of social democratic reforms, including Keynesian economic management, redistributive income policies,

construction of state housing, universal superannuation, and family, unemployment and health benefits. While Labour was out of power for most of the period from 1949 to 1984, the conservative National governments that replaced it did little to dismantle the welfare state created by Labour. For most of the 1950s and 1960s unemployment was very low, and economic prosperity high. This period has been described as representing the triumph of social democracy.<sup>125</sup>

### *3.10.2.3 The demise of social democracy*

Inflation played a big role in the downfall of Keynesian policies, particularly in countries such as the UK and USA that had no or weak corporatist industrial arrangements. Inflationary shocks led to workers trying to protect themselves from inflation by winning wage increases. The Keynesian solution – reducing government expenditure and/or increasing taxes – was politically unpopular as this involved cuts in public spending and increasing unemployment. As well, inflation came together with an economic slowdown ('stagflation'). This ran counter to the Keynesian view that inflation resulted from an overheated economy, providing a strong argument for those opposed to Keynesian economic interventions by governments.<sup>127</sup> Very rapidly, from the 1970s, many policy makers were persuaded by economists to reject full employment as a policy objective, and to concentrate on controlling inflation.

The crisis in Keynesianism led to its collapse rather than modification. Crouch (2011) argued that this was not because the theory was fundamentally wrong, but because "the classes in whose interests it primarily operated, the manual workers of western industrial society, were in historical decline and losing their social power".<sup>126</sup> p1 Hall (1993), however, believed that underlying the demise of Keynesianism was what he termed a shift in policy paradigms underpinned by a number of significant trends and events. These paradigms had, as Hall described them, substantial similarities with ideologies, and are discussed more fully below (s4.5.4). In brief, Hall saw Keynesian and monetarism as 'quintessential examples' of such paradigms, involving fundamentally different conceptions of how the economy worked, and the instruments required to make it work.<sup>100</sup>

### **3.10.3 Neoliberalism**

#### *3.10.3.1 Introduction*

While social democracy arose partly in reaction to the economic liberalism that prevailed until the Great Depression, neoliberalism represented a return. The economic difficulties threatening Keynesianism helped open the door.

Neoliberalism has a number of strands, and has been given various names which to some extent reflect differences in approach. But all approaches share, at least in theory, a “fundamental preference for the market over the state as a means of resolving problems and achieving human ends”<sup>126 p7</sup> Neoliberalism combines liberal political philosophy (emphasising the freedom of individuals to pursue their own interests with minimal interference by the state or society) with ‘economic liberalism’ (minimal interference with markets).

The term ‘neoliberalism’ is used in thesis because it is the common term used in contemporary social sciences to describe approaches that are consistent with that outlined in the previous paragraph.<sup>128</sup> While the intention here is to use it as a descriptive term, it is nevertheless recognised that it generally has negative and sometimes pejorative connotations.<sup>128, 129</sup>

A 2009 review of use of the term in peer-reviewed, English-language academic journals found that the term ‘neoliberalism’, after little use in the 1990s, exploded in use in this century, appearing in nearly 1000 academic articles each year from 2002 to 2005. It was far more commonly used than related terms such as monetarism, the Washington consensus, and market reform. The review noted that “neoliberalism ... is used frequently by those who are critical of free markets, but rarely by those who view marketization more positively”.<sup>128 p138</sup> Further, it had used in a wide variety of ways, and without definition more often than not.<sup>129</sup>

A key development in neoliberalism, as the term is now generally used, was the emergence of free market economics associated with the ‘Chicago School’. Milton

Friedman, its most influential member, went on to advise government leaders including Ronald Reagan, Margaret Thatcher, and (in Chile) Augusto Pinochet.<sup>130</sup> Friedman was closely associated with monetarism, an economic theory that directly challenged Keynesianism. His theory appealed to free market advocates because it reduced the role of government in the economy.<sup>130</sup>

Along with the rise of neoliberalism were new developments in a branch of economics called 'public choice theory'.<sup>131</sup> This was essentially the application to political science of an economic view of people as egoistic, rational, utility maximisers.<sup>132</sup> The theory assumed, among other things, that public servants or those working in non-government organisations were primarily concerned to promote their own interests. Public choice theory has been described as a 'sub-form' of neoliberalism.<sup>133</sup>

In the United Kingdom neoliberalism was initially called the 'new right' or 'Thatcherism' (after Prime Minister Thatcher).<sup>61</sup> In the United States it began as 'Reaganomics'<sup>134</sup> (after President Reagan) and more recently has been known as 'neo-conservatism'.<sup>60</sup> In New Zealand it started as 'Rogernomics'<sup>134</sup> (after Minister of Finance Roger Douglas). In Australia it has generally been known as 'economic rationalism'.<sup>60</sup> It is also commonly called 'market liberalism'.<sup>61</sup>

A review by Centeno and Cohen (2012) delineated three perspectives on neoliberalism: as economic policy, as an expression of political power, and as ideology (what they term 'ideational hegemony').<sup>127</sup> Each is discussed in the following sections.

### *3.10.3.2 Neoliberalism as economic policy*

As discussed above (s3.10.2.3), the combination of inflation, poor economic performance and rising unemployment in the 1970s undermined confidence in Keynesian economic interventions by governments, and opened the door for alternative economic policies, particularly those favouring market rather than government solutions.<sup>127</sup> The result was widespread adoption of market-oriented policies including fiscal austerity, free trade, deregulation, privatisation, and a commitment to protecting private property.<sup>127</sup> The first challenge for neoliberalism, according to Centeno and



Cohen, was inflation. New monetary policies, they reported, “succeeded in starving inflation out of the system, and by the mid-1990s, price stability had been almost universally achieved (though paid for with significant economic downturns and increasing inequality).”<sup>127</sup> p319

#### *3.10.3.3 Neoliberalism as politics*

From the 1980s, neoliberal economic policies became closely intertwined with a political transformation. The perceived failure of Keynesianism provided an opportunity for politicians who favoured reducing the role of the public sector and increasing that of the private sector to seize the initiative. The notion that the current system was seriously flawed and unable to bring a return to prosperity gave licence for policies that earlier would not have been tolerated. These included privatisation, deregulation of labour markets and reductions in welfare spending. The political centre of gravity moved to the right, leading to some traditionally left-of-centre parties and politicians to adopt neoliberal policies.<sup>127</sup> This trend was evident in the United States under President Clinton, in the United Kingdom under Prime Minister Blair, and in New Zealand under the influence of Finance Minister Roger Douglas.

#### *3.10.3.4 Neoliberalism as ideology*

The 2008 financial crisis was of a similar order to the ‘stagflation’ of the 1970s which led to in a large shift from social democratic to neoliberal policies in a number of liberal democracies. A move away from neoliberalism might have been expected from 2008, but in general this did not occur. This is in spite of the crisis being blamed by some on the excesses of unregulated capitalism, and being followed by initial moves by governments including those in the United States and United Kingdom to extend government control over private financial institutions.<sup>61</sup> Crouch (2011) referred to this continuing life as “the strange non-death of neoliberalism”.<sup>126</sup>

Centeno and Cohen (2012) proposed that what protected neoliberalism was its status as a dominant ideology. This dominance, they argued, began with developments in academic economics. These included monetarism (a focus on interest rates and inflation

rather than on employment), rational choice theory (which included the view that public economic interventions were useless), and the efficient market hypothesis (an argument that such interventions were unnecessary). Neoliberal economists successfully argued against market regulation as “expensive, ineffective, and fraught with negative unintended consequences – and [that] a realistic approach to policy making involved being cognizant of this practical reality”.<sup>127 p330</sup>

But not only politicians bought into the culture of the market. So to, according to Centeno and Cohen, did the public.

At the household level, an explosion of consumption perhaps unique in human history heralded the triumph of the market. ... [and] the language and logic of market exchange came to pervade daily discourse and political analysis. The sanctity of individual choice was elevated to the highest priority ... and inequalities were justified, functional, and inevitable.<sup>127 p331</sup>

Public acceptance of markets as the key feature in shaping economic and social arrangements is an example of what Gramsci called ‘cultural hegemony’ (s3.6.4). For Lindblom it would represent the successful ‘indoctrination’ of citizens by business interests (s3.4.3). For Lukes it would be a demonstration of what he regarded as people’s preferences being shaped by the powerful against their own interests (s3.3.3).

From another perspective, Larner (2000) noted that neoliberalism’s success could be attributed to “the capture of key institutions and political actors by a particular political Ideology (with a capital ‘I’), a body of ideas or world view ... understood to rest on five values: the individual; freedom of choice; market security; laissez faire, and minimal government”.<sup>134 p7</sup>

#### *3.10.3.5 Neoliberalism in New Zealand and Australia*

New Zealand and Australia were early and enthusiastic adopters of neoliberal policies, so much so that New Zealand’s Roger Douglas was voted top finance minister of 1986 in *Banker Magazine*, and Australia’s Paul Keating was named International Finance

Minister of the Year in 1987 by *The Economist*.<sup>130</sup> Both were members of governments that had been traditionally left of centre.

#### *3.10.3.6 Neoliberalism and inequalities*

The adoption of neoliberalism has been widely claimed to have resulted in greater inequalities within countries.<sup>127, 135</sup> Taxation policies designed to encourage business growth such as reduced taxes on profits and higher incomes have favoured owners of capital and the managers of large companies. Value-added taxes have been regressive, disproportionately affecting those on lower incomes. As well, the neoliberal concern with reducing the size of government has led to a reduction in many public services.<sup>127</sup>

According to Fenna (2004) a lesser concern for inequalities is central to neoliberal thinking. For neoliberals, justice is done when the same rules are applied equally to all (procedural justice), even though great inequalities may result. Intervening in the name of social justice or fairness to address inequalities would violate the rules of procedural justice.<sup>60</sup>

A review of advocacy for health equity (Farrer and colleagues, 2015) found that neoliberalism, also called 'market fundamentalism' or 'neoclassical economics', was the most frequently cited barrier to effective advocacy. Adherence to neoliberal thinking, the authors stated, resulted in support for deregulation from "governments, international institutions, and powerful corporate vested interests".<sup>136 p409</sup>

### **3.11 Conclusion**

This chapter described seven of what can loosely be called 'theories of the state': pluralism and its critics (s3.3), the 'neo-pluralism' of Charles Lindblom (s3.4), theories about elite power (s3.5), Marxism and neo-Marxism (s3.6), the new institutionalism (s3.7), corporatist arrangements (s3.8), and policy networks and governance networks (s3.9). This was followed by a description of two political ideologies, social democracy and neoliberalism (s3.10). It was not the purpose in this chapter to critique these theories and ideologies. Rather, they were described in order to provide a broad range

of lenses on political power and government policy making from which aspects of the power to influence government policy making could be derived.

There is good reason, as was argued above (s3.1), in attempting to view the factors influencing strongly contested political decisions through a number of alternative lenses. In this chapter the net has been thrown widely in an attempt to catch a diverse range of perspectives. All of these, in their different ways, have something to say about the strategies and tactics that might be used, or the sources of power that might be exploited, by the food industry during the course of the Review (Research Question 2). The next chapter delineates aspects of power that emerge from these theories, and develops a framework for considering how each aspect might be expressed in influencing, or attempting to influence, the outcomes of the Review of Food Labelling Law and Policy.

## Chapter 4

### Aspects of the power to influence political decisions

*“Power may be more unequal, or institutional constraints may be greater, or networks may be more important, or decision processes may be more coherent, in some places or situations than in others.”<sup>55 p109</sup>*

#### 4.1 Introduction

The purpose of the chapter is to develop a comprehensive framework for classifying the ways in which power operates when business and public health interests come into conflict over government policies or decisions. The focus is mainly on business power. While sometimes referring to interest groups in general or public health advocacy in particular, the framework that finally emerges in section 4.5 purports to be comprehensive with respect to business power only. This framework has been developed as a step on the way to addressing Research Question 2 (Influences shaping front-of-pack nutrition labelling decisions). It is applied in later chapters to analyse how various aspects of power operated in influencing government decisions about front-of-pack nutrition labelling (FoPL) during and after the Review of Food Labelling Law and Policy (the Review).

The framework was developed in order to assist, in this thesis, with the analysis of power influencing government decisions about FoPL arising from the Review. It is an output of the thesis that could potentially be useful as an analytic tool in other contexts where industry and public health interests conflict.

Power, as used here, is the ability of non-government persons or organisations to influence government decisions, irrespective of whether this power is directly or intentionally exercised. These decisions include deciding to adopt particular policy

settings and keeping policy issues off the agenda. The greater the ability to influence, the greater the power.

The case was made in the Introduction to Chapter 3 that any attempt at a full analysis of power as it relates to particular decisions requires the use of alternative lenses, each of which may suggest different areas to look and different applications of power to consider. The review of theories about power and political decision making in Chapter 3 illustrates how a number of differing approaches can do this. It also, in effect, provides a checklist of aspects of power that need to be considered in developing a comprehensive framework.

Frameworks for analysing power were a focus of the literature search on which both Chapter 3 and this chapter are based. Nothing was found that the author believed was sufficiently satisfactory to perform the function required of a framework in this thesis. Classifications of theories of the state, six of which are outlined above (s3.2), came closest. These have influenced the framework developed in this chapter.

The main reason for developing a framework was that existing theories of the state focused on 'schools' such as Marxism and pluralism that were too broad for a specific investigation of the power to influence political decisions. Strands within Marxism, for example, include material relevant to both of what are called below 'investment power' and 'ideological power'. As well, there are substantial commonalities in the relevant strands within each school, an example from Chapter 3 being the closeness between neo-Marxist Fred Block and 'neo-pluralist' Charles Lindblom on a number of issues. Further, the approach adopted in this chapter allows for combining aspects of power relating to theories of the state with political ideologies into the one framework.

The five aspects of power in the framework were developed using an iterative process described in Chapter 2 (s2.8).

Table 4.1 (s4.5 below) shows how each theory or approach from Chapter 3 has been incorporated into one of the five aspects of power.

This chapter begins by considering the distinction between agency (intentional behaviour by political actors) and structure (the context or environment in which political actions are situated). This leads to the major distinction in the framework developed here, that between agency power and contextual power (s4.2.1). Three criteria useful in further distinguishing aspects of the power are then outlined. First, power may be direct or indirect, and second, intentional or unintentional. Third, its accessibility can vary from being generally available to a wide range of agents through to being available only to business interests (s4.2.2).

Five aspects of power are distinguished and defined. First comes agency power, and particularly the agency power of business (s4.3), followed by four aspects of contextual power: investment power (s4.4.2), network power (s4.4.3), ideological power (s4.4.4) and institutional power (s4.4.5).

The chapter concludes by checking the aspects of power developed in sections 4.3 and 4.4 against theories of power and political decision making described in Chapter 3. This check shows how the framework developed here includes the theoretical approaches and perspectives reviewed in Chapter 3. The intention was to provide a comprehensive and diverse range of lenses for examining business power in relation to FoPL during and after the Review (s4.5).

## ***4.2 Aspects of power***

### **4.2.1 Agency and structure: conduct and context**

A central issue when considering power concerns the relationship between agency (or conduct) and structure (or context).<sup>54</sup> For Farnsworth (2007), agency power was exercised through the direct and deliberate actions of individuals or groups. Structural power was instead the power to influence policies or events without taking direct or intentional action.<sup>137</sup>

Agency refers to direct and intentional behaviour by political actors, while structure refers to the context or environment in which political actions take place. As will emerge

in following sections, the way in which this relationship is conceived (the lens through which it is viewed) is crucial in analysing the role of power in political decision making.

This discussion draws heavily on Hay's (2002) views on the relationship between agency and structure.<sup>54</sup> Hay was particularly concerned to stress that what is at issue is not 'agency versus structure' as competing accounts of political activity. He found inadequate both intentionalist accounts (those that consistently privilege agential factors) and structuralist accounts (that consistently privilege structural or contextual factors). For Hay, "any given and agreed set of empirical observations can be accounted for in more or less agential, more or less structural terms".<sup>54 p91</sup> Advocates of either agential or structural positions will seek and find either agency or structural explanations for political phenomena. Hay's discussion makes clear that use of either a single agential or structural lens is insufficient.

In recent years political theorists have, according to Hay, made "a quite conscious and concerted attempt to move beyond the widely identified limitations of the structural and agential extremes to which social and political theories seem inexorably drawn in the 1970s".<sup>54 p101</sup> This attempt has taken a number of forms, only one of which is discussed here. All the forms attempt to include both agency and structure within the one account.

Hay argues for the "strategic-relational approach" developed by Bob Jessop in which structure and agency, though analytically separable, "are in practice completely interwoven".<sup>54 pp126-7</sup> Hay explained:

[T]his approach acknowledges that agents both internalise perceptions of their context and consciously orient themselves towards that context in choosing between potential courses of action... [For] action to have any chance of realising such intentions, it must be informed by a strategic assessment of the relevant context.<sup>54 p129</sup>

The context, in other words, presents an actor with an environment in which some actions are more likely than others to succeed, and actions are shaped by the actor's



assessment of the possibilities within this environment. Farnsworth (2007) put it as follows:

Political and economic structures ... define the context for action. Whether and how various agents act within the political arena, and the scope they have to influence policy making, is influenced by the signals that such structures emit. These signals are read by business and other actors.<sup>137 p102</sup>

After reviewing recent political science literature, Marsh (2010) concluded that “structure and agency ... should be treated as a duality and the relationships between them should be viewed as ... interactive and iterative”.<sup>138 pp230-1</sup> As Bell (2012) put it, “[a]gents and environments interact and mutually shape one another over time”.<sup>139 p667</sup> This is consistent with Hay, and is the position adopted in this thesis.

While ‘agency’ and ‘structure’ are the terms typically used in the political science literature, Hay’s alternative use of ‘conduct’ (or action) and ‘context’ fits better with ordinary use of language. ‘Context’ in particular conveys the idea that action is guided and constrained by the actor’s perceptions of all relevant features of the environment. The term is thus less restrictive than ‘structure’. Structural factors can be seen as relatively stable aspects of society, whereas context includes, for example, transient conditions which may influence policy.<sup>140</sup> For this reason the term ‘contextual power’ is used below. This is particularly useful since the ‘structural power of business’ is used by a number of authors to reflect just one aspect of contextual power – called the ‘investment power of business’ in this thesis (s4.4.2).

#### **4.2.2 Distinguishing among aspects of power**

An attempt is made in the following sections to distinguish aspects of power implicit in the theories reviewed in Chapter 3. The agency/context distinction provides the starting point. Agency power as used in this thesis is what Hay (2002) describes as ‘direct power’: “a behavioural phenomenon which is immediate, directly observable, and empirically verifiable”. Contextual power, on the other hand, is the extent to which background factors differentially affect the parameters for action. It indirectly helps or constrains

actors in achieving their objectives. Deliberate attempts to shape the context in which policy decisions are made are treated here as part of agency power.

The direct/indirect distinction is one useful means of distinguishing among aspects of power. A second distinction implied by Hay is also useful, that between the intentional exercise of power and unintentional acquisition of power resulting from context. The intentional exercise of power, as used in this thesis, can be either behaviour that deliberately influences a specific government decision, or deliberately influences the context in which a range of decisions are made. The effects of contextual power are not, however, necessarily intended or foreseen by those benefiting.<sup>54</sup> As an example, a large employer may challenge the need for further regulation based on an argument that self-regulation is sufficient. The decision could go in the employer's favour, not because the self-regulation argument was convincing, but because the government was generally loath to regulate large employers further because of a general concern about job losses. In this case it was unintended contextual power rather than agency power that won the day.

A third distinction used below for distinguishing aspects of power is the extent to which power is widely available to a range of agents, and in particular whether it is available to both the food industry and public health advocates.

Five aspects of power are distinguished below, each drawing on one or more theories about the power to influence government decisions discussed in Chapter 3. Agency power is one of the five. The other four – investment power, network power, ideological power and institutional power are forms of contextual power. The five are called 'aspects of power' because, as the discussion above on agency and structure makes clear, there is always more than one lens for viewing the way in which the power available to different parties affects political decisions. Indeed the use of just one lens can close off other aspects that require consideration in order to properly assess the role of power.

## **4.3 Agency power**

### **4.3.1 Definition**

Agency power is defined, for the purpose of this thesis, as the ability of any group or person to influence government decisions in their favour through deliberate, intentional actions. Such actions include those aimed at influencing the context in which decisions are made. They include keeping issues off the government agenda by encouraging or supporting a government decision not to act. Agency power is direct, intentional, and in theory available to all, although on most issues some groups and persons have more power than others.

### **4.3.2 Agency power and theories of political decision making**

Agency power was the central focus of classical pluralists, notably Robert Dahl who was concerned to make the study of power 'scientific'.<sup>68, 71</sup> During the 1950s, when behaviourism was at its height, this meant concentrating on observable events and behaviour. Assumptions that people's preferences or interests might be other than those reflected by their behaviour were excluded.

While acknowledging that in practice some groups might have more power than others in influencing government decisions, the classical pluralists nevertheless believed that at least some power to influence was available to any group prepared to engage in the political process. As a result, classical pluralism was concerned with power directly and deliberately exercised by interest groups, and (at least in theory) available to all (s3.3.1).

A focus on the deliberate exercise of power to achieve political outcomes remained in the critiques of classical pluralism provided first by Bachrach and Baratz, and then by Steven Lukes. Bachrach and Baratz stressed the use of power to keep issues off the agenda by influencing the context in which decisions were made (s3.3.2). Lukes extended the concept of power by including its use to shape people's preferences in addition to affecting their interests (s3.3.3). Agency power, as defined here, includes

both influencing the context in which decisions are made and shaping preferences when this arises from a deliberate and direct attempt to further one's own interests.

#### **4.3.3 The agency power of business**

The power of an interest group in a pluralist context has been described by Bernhagen (2007) as "its ability to exert pressure".

This ability varies with the size and type of a group's membership, its financial resources, monopolistic control of expertise and information, status and access to government and the media, the capacity to influence public preferences and its organisational structure.<sup>64 p25</sup>

A number of writers, including Bernhagen, have argued that some elements of business have agency power of a different order to that of other interest groups. For Lindblom (1977), direct actions by business designed to influence policy outcomes, or what he called 'business interest-group activity', only supplemented the privileged position of business resulting from contextual power. He regarded business as much more effective than its ostensible rivals in the exercise of agency power. Business executives, according to Lindblom, "enjoy a triple advantage: extraordinary sources of funds, organizations at the ready, and special access to government".<sup>63 p194</sup> First, Lindblom listed the use of business funds for lobbying, entertaining government officials, political and institutional advertising, placing educational materials in schools, and engaging in litigation designed to influence government policy or its enforcement. Second, business executives had within their organisations political specialists who were always available and were "not volunteers of dubious reliability but paid employees".<sup>63 p196</sup> And finally, business leaders had, through their privileged position, ready access to political leaders prepared to listen attentively to them.

## **4.4 Aspects of contextual power**

### **4.4.1 Introduction**

Contextual power, as it was described in section 4.3.1, is the power to have influence without taking direct action. Contextual power can be operating in the background unbeknown to those being helped or constrained by it.

Four aspects of contextual power are described below. First is investment power – the influences on political decision making that arise from the importance of business investments to the economy (s4.4.2). The second, network power, is wide-ranging, and includes what are sometimes described in the literature as “elite power” and “governance power” (s4.4.3). Third is ideological power – the power resulting from the acceptance of world views favouring particular interests such as business by large segments of the population and/or political decision makers (s4.4.4). Finally, institutional power is the power resulting from the ways in which political organisations, structures, rules, operating procedures and informal conventions constrain options for some actors and enable them for others (s4.4.5).

### **4.4.2 Investment power**

#### **4.4.2.1 Definition**

Investment power is defined, for the purpose of this thesis, as the ability of business entities to have government decisions influenced in their favour because of the importance to the economy of their investment decisions. It is a form of contextual power: part of the context or background in which particular government decisions are made. When businesses directly and intentionally take advantage of their investment power to influence particular decisions they are exercising agency power as defined in section 4.4.1. Investment power is instead indirect, and may or may not be intentionally exercised. It is available only to those with the ability to make or withhold investments sufficiently important to influence government decisions, that is (generally large) business entities.

A direct threat to withhold or withdraw an investment made by a business executive in order to advance a policy objective is an example of agency power as defined in this thesis. An indirect but intentional use of investment power occurs when a business executive pursues a policy objective knowing that a policy maker is aware of the possibility that an investment may be withheld or withdrawn, and that this is likely to assist in a favourable decision, but the business executive makes no direct mention of withholding or withdrawing any investment. An example of an indirect but non-intentional benefit from investment power is that accruing to US Steel when the city of Gary kept pollution control off its agenda without the company having to even think about moving its investment elsewhere (s3.3.2).

Investment power is not the usual term used in the literature for the power accruing to business entities because of their importance to the economy. Some authors have used 'structural power' as close to synonymous with 'investment power' as defined here.<sup>64, 139, 141</sup> Others, however, use 'structural power' to refer to what is called here 'contextual power'. Farnsworth (2007), for example, used 'structural power' to refer to the power of business to exert indirect influence. For Farnsworth this power took two forms: investment-related and ideological.<sup>137</sup> This usage is consistent with that of Block (s3.6.3).

Because of its different uses in the literature and for other reasons discussed in section 4.2.1, the term 'structural power' is not used in developing the framework for aspects of power in this chapter.

#### *4.4.2.2 Investment power and theories of political decision making*

Two theorists discussed in Chapter 3 wrote at length about investment power as defined here, both in 1977. They came to similar conclusions, although starting from quite different positions. As a normative pluralist Charles Lindblom was concerned about investment power because he saw it as a major reason why, in practice, pluralism was failing badly (s3.4). Fred Block, on the other hand, was a Marxist (s3.6.3).

Lindblom was not the only theorist to regard pluralism as deficient because of its failure to address investment power. Crenson (1971)<sup>75</sup> showed how local politicians kept air

pollution control off the agenda because they feared a steel company in their city might relocate if air pollution became an issue (s3.3.2). Fuchs (2005) identified this power to set agendas as an important feature of investment power, noting that “the threat to move investments and jobs should governments make unfavourable policy choices need not even be voiced”.<sup>142 p776</sup>

Investment power, for both Lindblom and Block, was the result of the importance for the electoral prospects of governments in liberal democracies of maintaining a reasonable level of economic activity and business confidence. This was needed to provide employment and the supply of goods and services, and to maintain tax revenue so government could continue to function. All governments, whether left or right, therefore depended on encouraging business managers to continue investing in ways that promoted economic activity. This led to business interests attaining a ‘privileged position’ (Lindblom’s term) in influencing government decisions.

Both Block and Lindblom acknowledged that business interests used their privileged position to exert pressure on government to make particular decisions, but considered this as secondary to the indirect influence arising from investment power. Such actions merely provided, in Block’s words, the “icing on the cake”.<sup>89 p14</sup>

Przeworski and Wallerstein (1988) came to a similar conclusion in describing what they called the “structural dependence of the state on capital”. They argued that the effective capacity of any government is limited by the investment power of capital irrespective of “who the state managers are, what they want, and whom they represent”,<sup>143 p12</sup> and without the need for capitalists to organise and act collectively.

#### *4.4.2.3 Refining the concept of investment power*

Hacker and Pierson (2002) have provided a useful discussion of investment power that illustrates some of its complexities. They began by outlining the classic view developed by theorists such as Block and Lindblom:

The prospect of a public backlash gives policy makers a strong incentive to maintain the profitability of private investment. This power is structural because the

pressure to protect business interests is generated automatically and politically. It results from private, individual investment decisions taken in thousands of enterprises, rather than from any organized effort to influence policy makers.<sup>141 p281</sup>

Hacker and Pierson noted that the Block/Lindblom concept of investment power, and particularly Lindblom's generalisations about the 'privileged position' of business, had attracted criticism because "market systems are compatible with widely divergent relations between business and the state ... [and patterns] of government intervention vary greatly across countries and within particular countries".<sup>141 p281</sup> Business interests did not always get what they wanted, with governments clearly at times adopting policies opposed by some, or even most, businesses.

While accepting that the Block/Lindblom concept had merit, Hacker and Pierson saw it as requiring refinement in order to account for policy variations. They set out four propositions with this in mind. First, investment power was a variable, not a constant, with the degree to which capital was mobile playing a big part. Second, investment power was a signalling device: it did not dictate specific policy choices, although it could influence agendas and help define (or rule out) alternatives. Third, not all social policies activated the signalling device, which was strongest when business profitability was threatened. Finally, because business interests were not monolithic, particular policies might benefit some businesses and harm others, resulting in a mixed signal about investment implications.

Farnsworth and Holden (2006) also listed reasons for variations in investment power:

The extent to which it [investment power] impacts on governments and states depends on how mobile capital is; the number of alternative investment opportunities open to firms; the relative strength of the economy and the degree to which governments will be prepared to compete to retain present investment or attract new investments.<sup>144 p475</sup>



#### *4.4.2.4 Capital mobility*

A marked feature of capitalist economies is the competition among governments to attract and keep 'mobile capital'. This can lead to practices such as lowering business taxes and deregulating the labour market in order to attract investment from other jurisdictions.<sup>137</sup> Companies in industries where it is feasible to move to other countries or jurisdictions in order to reap higher profits experience a high level of investment power as a result. For companies lacking this mobility, such as those for which access to materials or markets restricts them to a particular location, investment power is much reduced or even eliminated.<sup>76, 137</sup>

While acknowledging that investment power is highly variable across companies and industries, both Farnworth and Holden (2006)<sup>144</sup> and Wilson (2003)<sup>65</sup> argued that it has generally increased in recent decades as a result of factors favouring capital mobility and related to globalisation. Wilson referred to developments such as improved transport to markets, the removal of government restrictions on the movement of capital, and reductions in tariffs and restrictions on trade through free trade agreements. This, Wilson contended, made it "far easier for business to relocate today than thirty years ago and, correspondingly, more plausible for businesses to threaten to move if confronted with unwelcome public policies".<sup>65 pp14-15</sup>

#### *4.4.2.5 Investment power and agency power*

As Hacker and Pierson (2002) pointed out, their four propositions refining the concept of investment power (s4.4.2.3) imply that agency power also plays a role in public policy decisions where investment power is a factor. They elaborated as follows:

When structural [investment] power fails, instrumental [agency] influence becomes more important. The impact of both factors will also vary in different stages of the policy-making process. Since structural power acts as a signalling device, its importance is felt primarily in setting the public agenda and in ruling out options that are particularly objectionable to potentially mobile firms. Instrumental power is often more relevant in determining the specific design of legislative proposals.<sup>141 p283</sup>

Bell (2012) provided another perspective by emphasising the interactive relationship between investment power and agency power, with each influencing the other. He reviewed a number of studies that “all hint that agency matters and that the ideas and attitudes of government policymakers are a potentially important factor in mediating the structural power of capital”.<sup>139 p665</sup> He continued:

[We] can define the structural [investment] power of business as working through the real or potential benefits or costs of real or threatened business activities in relation to state actors who must *perceive* such benefits, costs, or threats as significant and meaningful... Hence, power is not just an objective condition but is ... a relational artifact [*sic*], produced and mediated through social and ideational realms [Bell’s italics].<sup>139 p665</sup>

Thus while Hacker and Pierson acknowledged that investment power and agency power both influenced policy decisions, Bell went further by emphasising that this was an interactive rather than additive process. He also made it clear that the ideological frameworks of decision makers mattered in shaping policy responses to investment power.

#### *4.4.2.6 Investment power and food manufacturing in Australia and New Zealand*

The Food and Grocery Councils in both Australia (AFGC) and New Zealand (NZFGC) give substantial emphasis to the economic importance of the sector they represent. These two organisations are the peak bodies for food manufacturers and retailers in their respective countries.

In a 2012 submission the AFGC devoted the first seven paragraphs of the Preface to the economic importance of the food, drink and grocery manufacturing sector in Australia. Among other things mentioned were annual turnover (\$108 billion), number of businesses (over 30,100), number of jobs provided (more than 312,000) and contribution to international trade (\$46 billion). The seven paragraphs concluded as follows:

It is essential for the economic and social development of Australia, and particularly rural and regional Australia, that the magnitude, significance and contribution of this industry [food, drink and grocery manufacture] is recognised and factored into the Government's economic, industrial and trade policies.<sup>145 p2</sup>

The NZFGC, on its website, echoes the AFGC.

The New Zealand Food & Grocery Council (FGC) is an industry association which represents the manufacturers and suppliers behind New Zealand's food, beverage, and grocery brands. Our members represent more than \$34 billion in domestic retail sales, more than \$31 billion in exports, and directly or indirectly employ about 400,000 people, or one in five people in our workforce. The \$31 billion in exports was 72 per cent of New Zealand's total merchandise exports in 2014 to 195 countries. Food and beverage manufacturing is the largest manufacturing sector in New Zealand, representing 44% of total manufacturing income.<sup>146</sup>

#### **4.4.3 Network power**

##### *4.4.3.1 Definition*

Network power is defined, for the purpose of this thesis, as the ability of actors to have government decisions influenced in their favour because of their membership of networks. It is a form of indirect or contextual power: membership of particular networks can place actors in positions where their ability to influence government decisions is enhanced. Network power is exercised intentionally when an actor joins or participates in a network as a means of enhancing the likelihood of policy success. An actor may also benefit non-intentionally, such as when policy decisions are influenced in favour of the actor because of membership of a policy elite, or 'power elite' as described by C Wright Mills (s3.5.3). The ability to enhance the power to influence government decisions through networking is available to all.

##### *4.4.3.2 Network power and theories of political decision making*

Policy communities (s3.9.1.3) and advocacy coalitions (s3.9.1.5) have been described as networks of actors who have come together because they have shared policy objectives.

Such networks are likely to enhance the ability of all their members to influence policy decisions. Members of policy communities that include government actors are likely to be in a stronger position than is the case for members of other networks.

Governance networks (s3.9.2) come together through shared roles in making decisions about public policy, or administering such decisions, rather than because of shared policy objectives. It is not, however, necessary to be involved in a governance network to influence public policy. Investment power, for example, can result in public policy designed to suit business interests without active business involvement.

Elite networks as described by C Wright Mills (s3.5.3) and Ralph Miliband (s3.6.2) are groups whose members share elitist educational and social backgrounds. Rule by such an elite can be considered a form of network governance.

Corporatist arrangements (s3.8) are another form of network, and provide members with a privileged position in policy development.

Networks come in many forms, and with many ways of influencing government decisions. An attempt is made to tease out some of these forms in sections 4.4.3.3 to 4.4.3.10 below.

#### *4.4.3.3 Policy networks and power*

Hay (1998) has made the point that those included in powerful policy networks are likely to view them positively – as a means of enabling participants to progress their shared policy agenda. From the viewpoint of those excluded, however, network efficiency and power are anti-democratic, effectively disenfranchising many from the policy making process.<sup>147</sup>

Research into policy networks has often focused on their negative aspects. Policy networks – and particularly policy communities – can concentrate power among relatively few actors with privileged access to and participation in the decision making process.<sup>107</sup> In summarising a number of British case studies, Marsh and Rhodes reported:

All the case studies identify policy networks which were, to a greater or less extent, exclusive. In each [policy] area a limited number of groups enjoyed privileged access to policy making, shaping both the policy agenda and policy outcomes. There is little evidence that a plurality of groups is involved in policy making in the areas under consideration.<sup>106 p263</sup>

They concluded that policy networks destroy political responsibility by shutting out the public, creating privileged oligarchies, and favouring established interests.<sup>106</sup>

If there is only one policy network concerned with a particular policy area then this will be empowering for its members, and disempowering for those with an interest in the policy area who are excluded. The Advocacy Coalition Framework (s3.9.1.5), however, envisages two or more policy coalitions forming within the one policy area.

#### *4.4.3.4 Governance power as a form of network power*

Governance in public policy and administration was described in Chapter 3 as related to the involvement of both state and non-state actors in forming public policy, or in administering or delivering policy outcomes (s3.9.2).

Governance power, for the purpose of this thesis, is defined as a form of network power in which government and other actors share in developing public policy, or in administering or delivering public services, and where non-government actors have a formal role recognised by government.

#### *4.4.3.5 Governance, the power of the state, and business power*

Rhodes (2007) summarised an influential argument he had made over a number of years concerning his ‘hollowing out of the state’ thesis. Writing about the UK from the 1980s and 1990s, Rhodes argued that there had been a weakening in the power of central government.<sup>114</sup> As described by Fawcett and Daugbjerg (2012), “the distinction between state and society had become increasingly blurred and ... the capacity of the state to act independently of others had weakened as a result”. The hollowing out of the state – “upwards to international organisations, downwards by the marketisation of the public

sector and sideways by the creation of arm's length agencies"<sup>109</sup> pp196-7 – created the space for network governance.

Whether there has in fact been an erosion in the power of central government as a result of the growth of network governance has been disputed, with a number of empirical studies suggesting that there has not.<sup>115</sup> Instead, some have argued, there has been a reconfiguration but not diminution of state power.<sup>148, 149</sup> But however the power of the state is conceived, a good case can be made that governance power has increased for business.<sup>142, 150</sup> Farnsworth and Holden (2006) saw this as resulting from increased investment power, primarily associated with 'globalisation'. They noted that in the UK business was increasingly embedded within the welfare state "both through its increased participation in the management structures of welfare services and by ... private sector provision of services previously provided directly by the state ... [with the result that] business has never been so embedded in social policy."<sup>144</sup> pp491-2

#### *4.4.3.6 Governance power and the role of non-profit advocacy organisations*

Phillips (2006) argued that, in Australia, the rise of neoliberalism with its focus on market solutions, together with the dominance of conservative governments, had reduced the ability of non-profit advocacy organisations (NPAOs) to participate in governance. She critically reviewed the neoliberal critique of the role of NPAOs as set out by the Institute of Public Affairs (IPA – a right-wing think tank), which had been conducting a campaign to discredit a policy governance role for NPAOs. The conservative Howard Government was sympathetic to the IPA position, going so far as to commissioning a 2004 report from the IPA on NGO-Government relations. Phillips argued that a continuing and expanded governance role for NPAOs was needed in a properly functioning democracy.<sup>151</sup>

Maddison and Denniss (2005) raised similar concerns to Phillips about the weakened governance position of Australian NPAOs. This, they contended, was associated with the Howard Government's embrace of neoliberal 'public choice theory' (s3.10.3.1) which painted NGOs as self-serving organisations with little political legitimacy. They argued

that 'participatory governance' involving NPAOs was needed to provide disadvantaged groups with a voice in the policy making process.<sup>152</sup>

The views of Maddison and Dennis were based on a substantial survey of Australian advocacy organisations about their relations with the Federal Government and state governments to which 290 organisations had responded (Maddison and colleagues, 2004).<sup>153</sup> The Australian survey instrument was modified for use in New Zealand, with survey data obtained in 2009 from 153 community and voluntary organisations working in the social service sector (Grey and Sedgwick, 2013).<sup>4</sup> The main conclusion from this survey was as follows:

Responses to our survey demonstrate that the community and voluntary sector in New Zealand is not simply silenced by disapproving governments, they have been constrained by the very mode of governance that has come to dominate... The silencing is achieved by disciplining the sector through state funded contracts which encompass strong managerial requirements for accountability, auditing, measuring and evaluating outputs... The result is a ... sector that almost continually must check itself to ensure that it does not 'bite the hand that feeds it'.<sup>4 p2</sup>

Rather than engaging in policy debates, concerns for organisations in the sector had shifted to negotiating contracts with Government for service delivery. Democracy would be richer and policy making stronger, Grey and Sedgwick concluded, if Government trusted social service providers to also contribute to political decisions.<sup>4</sup>

Grey and Sedgwick also reported that, while the centre-left Clark government was generally perceived by their respondents as more sympathetic to a governance role for the community and voluntary sector, the constraints on advocacy were not much less than under the centre-right Key government that replaced the Clark government in 2008. They attributed this in part to the persistence of public choice theory ideas from the 1980s and 1990s. These ideas were about the need to constrain groups from opportunities to participate in shaping public policy on the assumption they would do so to further their own interests rather than the general good.<sup>4</sup>

#### *4.4.3.7 Social elites and network power*

Following Mills (1956)<sup>80</sup> and Miliband (1969),<sup>87</sup> elite power is defined, for the purpose of this thesis, as a form of network power in which network members have the ability to influence government decisions, or to be the beneficiary of favourable government decisions, because of shared membership with senior politicians of a single 'elite' social group.

Political power resulting from membership of elite business groups is outside the definition of elite power as used here. Business elites are discussed below in section 4.4.3.9.

For both Mills and Miliband there was, at the top of business and politics, a single elite whose members intermingled socially, and shared a similar background including attendance at 'elite' educational institutions. Farnsworth and Holden (2006) described this position as one where "business leaders and senior politicians occupy identical elite networks which reinforce social ties and privilege and, most importantly, serve to quell opposition to business".<sup>144 p475</sup> They went on to point out that the dependence of political parties on business finance also brought business people and politicians together socially. In both cases, social mingling would provide business participants with privileged access to politicians in a context providing opportunities to influence government decisions in their favour.

Both Mills and Miliband were describing states of affairs they saw as existing in the 1950s and 1960s, in the United States for Mills, and the United Kingdom for Miliband. It is not clear to what extent their views can be generalised beyond time and place.

The literature review behind this thesis produced little evidence for the existence in either Australia or New Zealand of a single, socially connected elite including both top business people and politicians. There is a clue that there is no such single elite in Australia. Gilding (2004) interviewed 43 Australians drawn from the Business Review Weekly 'Rich 200' list and found evidence for a variety of elites with limited integration. Groups based on 'old money', he contended, used institutions such as exclusive clubs to



exercise social closure against a new wave of entrepreneurs, often from different ethnic groups than the old establishment. Such clubs, Gilding argued, no longer serve as unifying institutions, having become sectional and anachronistic.<sup>154</sup> It would be an exception for a politician to be on the 'Rich list', and so Gilding would not have found a single elite involving both business executives and politicians. Nevertheless, his finding that even among the wealthiest business leaders social mingling was restricted suggests that a socially integrated political and business elite similar to those described by Mills and Miliband is unlikely to exist in Australia.

#### *4.4.3.8 The 'revolving door' between industry and government*

While well-connected social elites comprising both politicians and senior business executives may not be a strong feature in Australia or New Zealand, this need not apply to another way in which links can be formed between political and industry leaders. A 'revolving door' between government and industry is well documented.<sup>155-159</sup> This can involve former politicians or senior government officials accepting senior positions in industry.<sup>157</sup> A US study showed that when politicians or government officials take up positions in industry it is their political connections that are more useful to their new employer than the particular skills that they might bring.<sup>155</sup> The door also swings the other way, with senior industry executives accepting positions in government. It has been argued that the presence of former industry executives in government regulatory entities gives industry a special advantage. This can result in the industry concerned in having a voice in the policy-making process that is virtually guaranteed, something not available to other stakeholders.<sup>160</sup>

The food and beverages industry is among industries using the 'revolving door'. The Coca-Cola Company has used this as part of its strategy to influence governments, both in the United States and internationally.<sup>159</sup>

#### *4.4.3.9 Business elites and network power*

The research reported by Gilding in section 4.4.3.7 suggests that, not only is there no single elite including top politicians and business people in Australia, but that neither is

there a single business elite. Research on interlocking corporate boards provides the means of exploring this for New Zealand. Interlocks (instances of directors on more one board) are said to assist the formation and increase the power of business elites by mobilising 'social capital' – the interpersonal awareness and trust that strengthens collective action.<sup>161</sup> There is some, although limited, evidence that interlocking directorates assist in producing business political unity.<sup>162, 163</sup> However this appears unlikely in New Zealand. A study of board membership of the 1148 directors of New Zealand's top 230 companies in 2009 (Wood, 2010) suggested that, relative to Australia and the United States, there were limited opportunities in New Zealand for the degree of interlocking likely to produce significant social capital. The results suggested that "New Zealand interlocks do not construct the 'small world' of an elite that is closely tied together".<sup>161 p88</sup>

Business elites need not be restricted by national boundaries. Globalisation has resulted in increasing trans-national connections among the powerful, and a case can be made for the existence of a global business elite.<sup>78</sup> While substantial trans-Tasman integration between business policy and managerial elites in the Australia and New Zealand has been found, this fell short of forming one transnational community.<sup>164</sup>

#### *4.4.3.10 Corporatist arrangements and network power*

Following Crouch and Dore (1990), corporatist arrangements were described in Chapter 3 as a bargain between some organ of government and one or more interest groups, with the groups agreeing to behave in ways considered to be in the public interest in return for certain institutionalised benefits (s3.8).

The concept of corporatism has been criticised as of little theoretical value.<sup>165</sup> Parsons (1995) suggested that "the contribution of the corporatist model to the analytical tool box has been ... undermined by the development of the 'policy community' approach ... which has provided a far more coherent framework for analysing new patterns of policy relationship in liberal democratic societies".<sup>166 p259</sup> The main characteristic of policy communities, as described in section 3.9.1.3, was the sharing of a policy agenda among

a limited group of actors working closely together, with other actors excluded. Corporatist arrangements fit within this description. They also fit, and probably better, within the description of governance networks (s3.9.2). Corporatist arrangements are not therefore considered further in this thesis.

#### **4.4.4 Ideological power**

##### *4.4.4.1 Introduction*

Ideology, as used here, has been defined as “a system of ideas and ideals, especially one which forms the basis of economic or political theory and policy”.<sup>167</sup> Ideologies are, in Fenna’s (2004) words, “world views that interpret the way things are, and suggest the ways things should be”.<sup>60 p41</sup> Fenna suggested that, as comprehensive economic, social and political philosophies, only liberalism, socialism and perhaps fascism met his criteria as fully-fledged ideologies. These were relatively self-contained and consistent sets of ideas providing guidance on most of the major issues of political life and were reasonably well differentiated from competing views.<sup>60</sup>

Possible contenders as ideologies that are discussed in Chapter 3 are Marxism, social democracy and neoliberalism. Marxism (s3.6) is scarcely relevant in today’s liberal democracies, and is not considered further. Nevertheless some concepts from twentieth century Marxist writers including Gramsci (s3.6.4) and Block (s3.6.3) are useful in considering the nature of ideological power. Both social democracy (s3.10.2) and neoliberalism (s3.10.3), however, provide currently relevant and distinctive interpretations of economic and political theory and policy. Both are normative, with distinctive and competing views on how the world should be.

##### *4.4.4.2 Definition*

Ideological power is defined, for the purpose of this thesis, as the ability of political actors to have government decisions influenced in their favour because of the relative dominance of an ideology. It is a form of contextual power: part of the context or background in which particular government decisions are made. When actors directly

and intentionally take advantage of ideological power to influence particular decisions they are exercising agency power as defined in section 4.4.1. Ideological power is instead indirect, with its availability dependent on the match between an actor's interests and the government's and/or voters' ideological stance. A group will have substantial ideological power when the ideological stance of the government favours its interests, even more so when voters generally accept the same ideology as the government.

#### *4.4.4.3 Ideological power and theories of political decision making*

A number of writers discussed in Chapter 3 referred specifically to ideological power as defined here, although through use of different terms. These include Lukes (s3.3.3), Lindblom (s3.4), Block (s3.6.3), Gramsci (s3.6.4) and Hall (s3.7.2). Two particular ideologies relevant to Australia and New Zealand – social democracy and neoliberalism – were discussed in section 3.10. If ideological power is as important as has been sometimes suggested in preceding sections, the dominant ideology at a particular time is arguably the most important of all contexts for shaping government decisions on issues where industry and public health take different sides.

In setting out his views on ideological power (although he did not use the term), Lukes (1974) began by noting that “A may exercise power over B by ... influencing, shaping or determining his [B's] very wants”.<sup>77 p23</sup> He continued by asking:

[I]s it not the supreme and most insidious exercise of power to prevent people, to whatever degree, from having grievance by shaping their perceptions, cognitions and preferences in such a way that they accept their role in the existing order of things, either because they can see or imagine no alternative to it, or because they see it as natural and unchangeable, or because they value it as divinely ordained and beneficial?<sup>77 p124</sup>

Accepting the existing order of things is another way of saying accepting the dominant ideology. Lukes argued that when this occurs, people do not challenge what may not be in their interests, affording great power to those whose interests are favoured by the existing order.

Lindblom (1977), in a similar vein to Lukes, made the case that business ‘constrains the volitions’ of the general public. Lindblom suggested that “businessmen [*sic*] achieve an indoctrination of citizens so that citizens’ volitions serve not their own interests but the interests of businessmen”.<sup>63 p202</sup> This became possible, he proposed, because control of the mass media was in business hands. Through the media business interests pushed the message that private enterprise was intertwined with democracy and freedom. An attack on the first was seen as an attack on the others. As a result, Lindblom contended, “core beliefs are the product of a rigged, lopsided competition of ideas”.<sup>63 p212</sup>

Lindblom was not suggesting that all business communications aiming to secure public support were indoctrination. Individual businesses, for example, frequently competed for public approval. But business interests are of one mind, he claimed, when it comes to using the media to legitimise their privileged position, and in using “their disproportionate influence to try to create a dominant opinion that will remove grand issues [such as the importance of private enterprise] from politics”.<sup>63 p204</sup>

Two of the Marxist writers discussed in section 3.6 were concerned with ideological power. Block (1977) wrote of ‘bourgeois cultural hegemony’ as shaping an environment favouring the interests of capital.<sup>89 p14</sup> It was Gramsci, however, who had the most to say about ideological power from a Marxist perspective. Gramsci used the concept of ‘cultural hegemony’ to describe the ‘spontaneous’ consent given by most people to the general direction imposed on social life by the ‘ruling classes’. He was most concerned about internalisation or acceptance by the ruled of “the values, norms, perceptions, beliefs, sentiments and prejudices” that supported existing capitalist arrangements. The struggle faced by those trying to establish an alternative Marxist hegemony was, for Gramsci, as much a struggle over consciousness as defeating capitalism (s3.6.4). It was, therefore, a battle to wield ideological power.

#### *4.4.4.4 Policy paradigms and ideological power*

Hall (1993) developed the concept of ‘policy paradigms’ as a means of explaining the shift from Keynesianism to monetarism in the UK between 1970 and 1989. Hall regarded

both as “economic ideologies” that were “quintessential examples” of policy paradigms.<sup>100 p284</sup>

Hall defined policy paradigms as follows:

[P]olicymakers customarily work within a framework of ideas and standards that specifies not only the goals of policy and the kind of instruments that can be used to attain them, but also the very nature of the problems they are meant to be addressing... [T]his framework is embedded in the very terminology through which policymakers communicate about their work, and it is influential precisely because so much of it is taken for granted and unamenable to scrutiny as a whole. I am going to call this interpretive framework a policy paradigm.<sup>100 p279</sup>

A shift in policy paradigm, Hall believed, was at heart political. Change would “depend not only on the arguments of competing factions, but on their positional advantages within a broader institutional framework, on the ancillary resources they can command in the relevant conflicts, and on exogenous factors affecting the power of one set of actors to impose its paradigm over others”.<sup>100 p280</sup> Also important were the decisions made by politicians as to whom among experts they regarded as authoritative. Finally, instances of policy failure were likely to play a part in a paradigm shift.

Policy making in virtually all fields, Hall argued, “takes place within the context of a particular set of ideas that recognize some social interests as more legitimate than others and privilege some lines of policy over others”.<sup>100 p292</sup> The existence of a dominant policy paradigm constrained some policy actors, while empowering others. In this respect it was not unlike Gramsci’s ‘cultural hegemony’.

#### *4.4.4.5 Social democracy and neoliberalism as ideologies*

Beder (2006) neatly, if simplistically, captured perhaps the key ideological distinction between social democracy and neoliberalism: social democracy is about ‘freedom from’, while neoliberalism is about ‘freedom to’.<sup>130</sup>

Social democracy, as described in section 3.10.2, is essentially about how to make a capitalist economy in a liberal democracy work for all citizens. Everyone who was able to work should have the opportunity to participate in adequately paid employment. All citizens should have good access to health care and educational opportunities, regardless of their income. All, and particularly the most vulnerable, should be protected from all forms of oppression or exploitation, from poverty, and from external threats to their health and welfare. Social democrats believe that the state had an important role in regulating business in order to facilitate these goals.

Neoliberalism (s3.10.3), on the other hand, has a fundamental preference for market rather than government solutions. For neoliberal theorists, government attempts to interfere with markets are expected to usually have perverse consequences. The best regulator of business activity is the market. Full employment should not be a policy objective, government expenditure should be kept low, and responsibility for their health and welfare needed to be placed on individuals or in the private sector rather than with governments.

As the discussion in section 3.10.3.6 suggests, there is evidence that public health goals are more likely to be addressed and furthered under social democratic rather than neoliberal political arrangements. Raphael (2013), for example, found social democratic regimes superior to regimes more at the neoliberal end of the political spectrum in implementing health promotion policies, and in addressing the social determinants of health.<sup>168, 169</sup>

#### *4.4.4.6 The ideological power of business*

Lukes, Lindblom, Block and Gramsci were all some way left of centre in their political views. Of the four, two were Marxists, and one (Lukes) described his own views as 'radical'. The fourth, Lindblom, while generally described as 'neopluralist', used language similar to and often as strong as the other three in his assault on the 'privileged position of business' in the United States. Each, from his different perspective, believed

that business interests benefitted from ideological power because of the general acceptance of a business-friendly ideology.

Three of the four (Lukes, Block and Lindblom) wrote in the 1970s, at the beginnings of the emergence of neoliberalism as a strong ideological influence in a number of liberal democracies including New Zealand and Australia. It is probably fair to say all three would see fully-fledged neoliberalism as the embodiment of their concerns about the ideological power of business.

As well as writing at much the same time, Lukes (the United Kingdom) and Block and Lindblom (the United States) lived in countries with relatively similar economic systems. Gramsci was the odd one out – an Italian living in fascist Italy, for much of the time in prison. Nevertheless his views on ‘cultural hegemony’ are instantly recognisable as sharing, with his three successors, a common concern with the ideological power of business and capitalism. It has been observed that Lukes drew implicitly on Gramsci’s work.<sup>54</sup>

The concern in this thesis is not whether the radical view of the ideological power of business expressed above is right or fair, but whether it can help generate a useful perspective for identifying a possible aspect of business power in the Review that might otherwise be missed. Theorists writing in the first decade of this century suggest that ideology continues to be a highly important contextual factor in political decision making. Farnworth (2007), for example, noted that a group may “exercise ideological hegemony if its interests can be legitimised as the ‘common interest’ ..., which is precisely the position that business is in”.<sup>137 p101</sup>

Fuchs (2005) considered a number of aspects of business power including agency, investment and institutional power as defined in this thesis. For the full picture, she argued, it was also necessary to consider power as a function of norms and ideas. She termed this ‘discursive power’. To a growing extent, she wrote, “policy decisions are a function of discursive contests over the frames of policies and the assignment of problems to one category or another by linking them to specific fundamental norms and



values”.<sup>142 p777</sup> The discursive power of business, Fuchs argued, is particularly powerful because of its broad impact on the political process. Business interests can enhance their agency power by framing issues in ways that generate public support, thereby increasing pressure on policy makers and helping to legitimise neoliberal objectives.<sup>119</sup>

#### **4.4.5 Institutional power**

##### *4.4.5.1 Definition*

Institutional power is defined, for the purpose of this thesis, as the extent to which actors attempting to influence government decisions are advantaged or disadvantaged by the institutional context in which these decisions are made. Institutional power is indirect, flowing more to some groups than to others depending on the institutional context behind particular decisions.

##### *4.4.5.2 Institutional power and theories of political decision making*

Institutional approaches to political power, as discussed in section 3.7, draw attention to the ways in which political behaviour is shaped by the institutional context in which it occurs. This context includes, for the new institutionalists, not only formal political organisations, structures, laws, rules and operating procedures, but informal conventions and dominant ideologies (s3.7.2). As described by Hay (2002), the new institutionalism is concerned with “the mediating role of the institutional contexts”<sup>54 p11</sup> in which political decisions are made.

Investment, network and ideological power as defined in sections 4.4.2 to 4.4.4 all relate to institutional power as used here. Awareness by politicians of the investment power of particular industries, for example, is part of the context influencing their decisions. The three aspects are, however, treated separately because of their importance in the literature relating to the power to influence government decisions, and because theorists adopting approaches other than the new institutionalism have made large contributions to the literature. The concern here is therefore with influential institutional contexts noted in section 3.7 other than those involving investment,

network or ideological power. These other institutional arrangements include political structures and organisations, law including regulations, political rules and operating procedures, and history involving path dependency. Instances where these provide a favourable climate for either business interests or public health are considered to enhance institutional power for the favoured sector.

#### ***4.5 Theories of political decision making and aspects of power***

One of the aims in developing aspects of power in this chapter, as noted above (s4.1), was to take advantage of the wide net thrown in Chapter 3 in an attempt to identify a variety of lenses for viewing power and political decision making.

Table 4.1 provides a check of how well this has been achieved. This is done by relating each theory or approach described in Chapter 3 with one of the five aspects of power developed in this chapter.

In conclusion, the five aspects of power described in this chapter (agency, investment, network, ideological and institutional) appear to comprehensively encompass the theories about power and political decision making reviewed in Chapter 3. This gives grounds for confidence that they provide a good framework for identifying the multitude of ways in which power could potentially influence political decisions about front-of-pack nutrition labelling during and following the Review of Food Labelling Law and Policy.

**Table 4.1 Links between theories (Chapter 3) and aspects of power (Chapter 4)**

<b>Theory or approach (Chapter 3)</b>	<b>Aspect of power (Chapter 4)</b>
Classical pluralism (s3.3.1)	Agency power (4.3.2)
Influencing political agendas – Bachrach and Baratz (s3.3.2)	Agency power (s4.3.2)
Shaping preferences – Lukes (s3.3.3)	Agency power (s4.3.2) Ideological power (s4.4.4.3 and s4.4.4.6)
Demise of classical pluralism (s3.3.4)	Investment power (s4.4.2) Ideological power (s4.4.4)
Neopluralism – Lindblom (s3.4)	Agency power (s4.3.3) Investment power (s4.4.2.2 and s4.4.2.3) Ideological power (s4.4.4.3 and s4.4.4.6)
Theories about elite power (s3.5)	Network power (s4.4.3.2, s4.4.3.9)
Marxism – Miliband (s3.6.2)	Network power (s4.4.3.2, s4.4.3.7)
Marxism – Block (s3.6.3)	Investment power (s4.4.2.2 and s4.4.2.3) Ideological power (s4.4.4.3 and s4.4.4.6)
Marxism – Gramsci (s3.6.4)	Ideological power (s4.4.4.3 and s4.4.4.6)
The new institutionalism (s3.7)	Institutional power (s4.4.5)
Corporatist arrangements (s3.8)	Network power (s4.4.3.10)
Policy networks (s3.9.1)	Network power (s4.4.3.2 and s4.4.3.3)
Network governance and governance networks (s3.9.2 )	Network power (s4.4.3.2, s4.4.3.4 to s4.4.3.6)
Social democracy (s3.10.2)	Ideological power (s4.4.4.5)
Neoliberalism (s3.10.3)	Ideological power (s4.4.4.5)

## **4.6 Summary**

This chapter describes ‘aspects’ of the power to influence political decisions, particularly the power available to businesses with products that are threatened by public health concerns. The chapter prepares the ground for considering, later in the thesis, the ways

in which business power might influence decisions about FoPL during and following the Review. This is in preparation for answering Research Question 2 (factors influencing FoPL decisions).

Chapter 3 uses a number of different lenses in an attempt to uncover the full range of ways in which business power, and to a lesser extent power available to public health advocates, can influence government decision making. This chapter continues by identifying and describing five aspects of power derived from the literature review in Chapter 3. It begins by distinguishing agency power from contextual power (s4.2). Agency power is defined as the ability of any group or person to influence government decisions in their favour through deliberate, intentional actions (s4.3).

Contextual power exists for a party (such as an industry) to the extent to which it is favoured by the background or context in which decisions are made. Four aspects of contextual power are identified. Investment power arises through the ability of business entities to attract favourable treatment from government decision makers because of the importance of their investment decisions for the economy (s4.4.2). Network power is defined as the ability of actors to have influence over government decisions because of their membership of networks, in particular through policy communities or involvement in governance arrangements (s4.4.3). Ideological power arises when actors have government decisions go their way because of the relative dominance of a particular ideology. Social democracy and neoliberalism are the two 'ideologies' identified as most relevant in Australia and New Zealand (s4.4.4).

The fourth contextual aspect (and fifth aspect in all) is institutional power, defined as the extent to which actors are favoured by the institutional context in which government decisions are made. This context can include formal political organisations, structures, laws and operating procedures, but also informal procedures and dominant ideologies (s4.4.5). Investment, network and ideological power all fall within this definition, but are treated separately in this thesis, both because of their importance in the literature and because they can provide different lenses from those of institutional theorists. Discussion of Institutional power is therefore, for the purpose of this thesis, concerned

with contextual aspects of power other than investment, network and ideological power.

One of the five aspects, the agency power of business, is comprehensively explored in the next chapter.



## Chapter 5

### **Business practices used in attempts to exercise agency power**

#### ***5.1 Introduction***

The business practices of interest in this thesis are those that have negative consequences for public health. In most cases these are practices employed by large companies or corporations that have legal responsibilities to act in the best interests of the company, which generally means acting so as to maximise profits. Privately owned companies also generally act in this way. Often, attempts to maximize profits means causing or risking damage to people's health.<sup>170-172</sup>

The purpose of this chapter is to identify and describe business practices aimed at influencing governments to make decisions favourable to business interests. It is part of laying the groundwork for answering Research Question 2 (influences shaping front-of-pack nutrition labelling decisions).

Business actions intended to directly influence government decisions and policies, or the contexts that help shape these, come in many forms as is evident below. The ability of business to be successful as a result of these practices constitutes its 'agency power' (Chapter 4).

The context in which governments make decisions, or choose not to make decisions, is crucial in determining whether particular business practices bear fruit. There is substantial evidence, as evidenced in Chapter 4, that this context frequently privileges business interests, particularly in countries where governments have neoliberal leanings. Nevertheless, this does not mean that business interests can sit back and wait for the dominoes to fall their way. It has been claimed that, among students of business and politics, it is now "conventional wisdom that the structural power of business is not

absolute and that in many cases, especially concerning issues over which there is little agreement, firms have to mobilize and lobby to promote and protect their interests”.<sup>173</sup>

Sections 5.2 to 5.5 below describe some common practices used by business interests to influence government decisions in their favour. This includes, as already noted, actions aimed at influencing the context in which decisions are made. Some of the practices are typically aimed at influencing particular government decisions (direct lobbying, for example). Others are aimed more at developing a favourable context for decision making. Context-focused practices, such as most public relations, are attempts to create a favourable climate for a broad range of policies or decisions. They are, in effect, direct efforts to create an environment in which the agent will benefit indirectly.

Not all business practices aimed at influencing government policy may be relevant to the outcomes of Review of Food Labelling Law and Policy (the Review). This is, however, something best decided by looking for evidence without any preconceptions. As was argued in Chapter 3, this approach can help avoid use of too narrow a lens resulting from theoretical or other biases. With this in mind, a literature search was conducted in July 2013 (s2.3.6) that included business practices identified as having been used for political purposes. The results of this search are summarised in Table 5.1.

By the time, in 2013, that the work to produce Table 5.1 had been completed it became clear that, much as it would have been highly useful, not all identified business practices could be examined, given the available time and resources. A decision was therefore made to restrict the case study to practices that seemed more likely to be discoverable, given the data collection methods that had been adopted (Chapter 2). Interviews with key informants had already been conducted by 2013, reducing the scope for identifying some of the business practices used during and following the Review that were unlikely to be on the public record. A brief summary of practices identified as ‘not considered’ because of the practicalities of collecting relevant data (see Table 5.1) is provided below (s5.5).



**Table 5.1 Business practices identified as used in attempts to exercise agency power**

Practice	Use in the case study
1 Direct representations to government (lobbying)	s5.2
2 Building relationships with political decision makers	Not considered
3 Attempting to influence elections	Not considered
4 Managing external relationships <ul style="list-style-type: none"><li>• Corporate public affairs</li><li>• Public relations</li><li>• Corporate social responsibility</li><li>• Using the media</li><li>• Demonstrating public support (opinion polls)</li></ul>	Not considered
5 Working with, enlisting or creating allies <ul style="list-style-type: none"><li>• Building/using organisations with like-minded members</li><li>• Enlisting allies</li><li>• Creating allies</li><li>• Think tanks</li></ul>	Not considered
6 Attempting to reduce the likelihood of government regulation <ul style="list-style-type: none"><li>• Promoting self-regulation</li><li>• Pre-empting opposing initiatives</li><li>• Diverting attention</li></ul>	s5.3
7 Framing of issues relating to public health <ul style="list-style-type: none"><li>• Personal and parental responsibility</li><li>• Personal freedom, or freedom of choice</li><li>• Educating consumers as the main solution</li><li>• The 'nanny state'</li><li>• Industry as moderate and reasonable</li><li>• Industry opponents as radical, extremist, or not credible</li><li>• There are no bad foods</li></ul>	s5.4
8 The misuse of policy-relevant science <ul style="list-style-type: none"><li>• Industry-funded research</li><li>• Influencing research prior to publication</li><li>• Influencing what is published</li><li>• Influencing the interpretation of published research</li><li>• Influencing the balance of the research literature</li></ul>	Not considered
9 Using the law	Not considered

## **5.2 Direct representations to governments: lobbying**

This section considers direct lobbying, defined as attempting to influence government policy or action by direct representations to legislators or government officials on a person-to-person basis.<sup>174</sup> This includes face-to-face meetings, video conferencing and telephone calls. Direct representations are defined here as occurring when the party attempting to influence decisions or agendas honestly identifies itself or who it represents, and the outcome it wishes to see.

Lobbying is not the only form that direct representations can take. Other forms include making submissions to inquiries, or organising petitions or letter-writing campaigns. The definition of direct representation used here excludes, however, such activities when the sponsor or organiser is not transparent. Petitions and letter writing campaigns orchestrated by the tobacco industry through front groups provide an example of activities not considered as direct representations.<sup>175</sup>

Opposition to regulation of their industry is a major driver of business lobbying. The tobacco, alcohol and processed food and drink industries all have all lobbied intensively for this purpose.<sup>176</sup>

### **5.2.1 Gaining access to government decision makers**

The ability to gain personal access to government decision makers is a prerequisite for lobbying. For this reason, former politicians, senior government officials, and political advisers are eagerly sought as lobbyists, as are others with political contacts including family connections.<sup>174</sup>

Charles Lindblom, in his influential 1977 book *Politics and Markets*,<sup>63</sup> argued that, because of their 'privileged' position, business executives are greatly advantaged by their ease of access to politicians and government officials. Contextual factors assisting business access to politicians include the role played by large enterprises in providing employment, the desire of decision makers not to offend business executives whose companies have made political donations or provided corporate hospitality, and the

high social status of top executives which can bring them into social contact with politicians and senior government officials.<sup>174</sup>

### **5.2.2 Factors relating to lobbying success**

Gaining access to decision makers is necessary for lobbyists, but more is required if lobbying to be successful. Effective lobbyists need to be knowledgeable, able to present expert information, and able to provide a credible analysis of the issue at stake.<sup>174</sup> They also need contextual factors in their favour.

Numerous studies have investigated factors relating to lobbying success. Results have not been consistent, and have led to little in the way of widely-accepted conclusions.<sup>177, 178</sup> Some studies have pointed to interest group properties, such as financial resources or possession of knowledge or information desired by policy makers. Others have focused on issue-specific factors such as salience, the extent of conflict, and complexity.<sup>177</sup>

### **5.2.3 Lobbying success: a perspective from the United States**

Direct lobbying is more easily studied in countries such as the US where lobbyists are required to register. A major investigation of lobbying in Washington DC by Baumgartner and colleagues<sup>179</sup> produced some intriguing insights, although the extent to which these can be generalised beyond American federal politics is open to question.

Baumgartner and colleagues were able to compare the monetary and other resources available to interest groups on different sides of an issue against the outcome for that issue; who won, and who lost. They found that citizen groups had substantially fewer resources, including people, than business organisations. The much greater resources generally available to business groups did not, however, generally lead to greater success in achieving desired outcomes. Baumgartner and colleagues suggested a number of reasons for this. One was that, unless an issue was “business-wide”, business groups might be found on different sides. But an issue broad enough to win support across the entire business community (a change to employment law, for example) was

likely to unite and mobilise a broad coalition in opposition. A second reason was that policy disputes were essentially about changing or defending the status quo. Those with greater resources often failed to achieve a change in the status quo because the status quo already reflected their power. Baumgartner and colleagues found maintenance of the status quo was the most likely outcome of policy disputes, at least in the short term.

Given the comprehensiveness of the Baumgartner study, its results carry substantial weight. Nevertheless, there are examples where intensive lobbying by business interests appears to have borne fruit. In 2009, at the time President Obama's health reforms were being legislated, intensive lobbying by the healthcare industry was seen by supporters of the reforms as influential in the failure of the legislation to provide the comprehensive solution to healthcare problems that Obama had wanted.<sup>180</sup>

#### **5.2.4 Lobbying success: a British perspective**

A study of interest group influence in British politics by Patrick Bernhagen came up with some similar results to those of Baumgartner and colleagues<sup>181</sup> With no register of lobbyists to work from, Bernhagen used promises for policy change recorded in the media to identify the 163 proposals. Business support for policy proposals proved to be unrelated to eventual policy decisions. There was, however, a weak but statistically significant relationship between support from citizen groups and outcomes.<sup>181</sup> Bernhagen noted, however, that his study did not pick up contextual influences on policy agendas, and he acknowledged that "privileged actors may enjoy disproportionate covert influence over the origins of government policy proposals due to their involvement in policy networks, expertise on policy-relevant issues, and their importance for the functioning of the economy".<sup>181 p572</sup> This meant that they did not necessarily need to publicly express their policy preferences.

Another British study showed that information provided by lobbyists can be useful to politicians when considering a policy proposal, providing the politicians are confident the information can reliably inform their beliefs about the proposal's likely consequences. Lobbying was found to be generally ineffective when information

provided was inaccurate, or seen as biased to benefit the lobbyist at the expense of wider constituencies.<sup>182</sup>

### **5.2.5 Intensive lobbying by the food and beverages industry**

While some studies of lobbying across a wide range of issues appear to show no significant advantage in outcomes for business groups there are examples where this does not apply for the food industry. Health and consumer groups pushed for traffic light labelling to be mandated throughout the European Union in 2010 legislation. This was opposed by the food industry, who instead supported use of voluntary approaches, and particularly the use of Guideline Daily Amount (GDAs). Some Members of the European Parliament (MEPs) and their staff reported a massive lobbying effort from industry that completely swamped that from health and consumer groups.<sup>183, 184</sup> MEPs were reported as being “bombarded ... with documents, reports and factsheets praising GDAs and undermining traffic lights”.<sup>185</sup> Industry lobbyists also made unscheduled approaches to MEPs in their offices and corridors, and in bars and restaurants.<sup>183, 185</sup> Several MEPs reported that the lobbying effort by the food industry was among the most intensive they had experienced. Prominent among the lobbyists were food and beverage giants Coca-Cola, Danone, Kellogg’s and Nestlé.<sup>185</sup>

The promotion of GDAs, according to Corporate Europe Observatory (CEO), had been estimated by a food industry body as costing €1 billion.<sup>183 p7</sup> CEO contended that GDAs had only been developed and promoted because of industry fears of stricter regulation including traffic light labelling.

In the United States, too, efforts to promote healthier eating have been opposed by the food and beverage industries by applying resources to lobbying that far exceed those available to public health and consumer groups. Examples of healthy eating proposals defeated by food industry lobbying are provided in a Reuters report based on analysis of lobbying records. The authors claimed that the food and beverages industries “have never lost a significant political battle in the United States despite mounting scientific evidence of the role of unhealthy food and children’s marketing in obesity”.<sup>186</sup>

### 5.2.6 Conclusion

Business groups can, in general, devote far greater resources to lobbying than non-business groups.<sup>63, 179, 183, 186</sup> The evidence does not suggest that the application of greater resources can consistently produce outcomes favourable to business. And even where lobbyists' preferences are reflected in policy decisions, as Woll has argued, it cannot be assumed this results directly from the lobbying. After considering three case studies of business lobbying, she concluded:

... the impact of business depended on the interest government had in letting business play its role... The apparent lobbying success is therefore not an indication of 'power', in the sense of victory in a business-government conflict, but of the convergence of business and government objectives.<sup>178 pp58-9</sup>

Woll's study suggests that the extent to which governments are inclined to accept the business position or that of opponents on a particular issue is strongly influenced by context.

## 5.3 *Reducing the likelihood of government regulation*

### 5.3.1 Introduction

A major concern for companies or industries with products or services under threat from public health interests is to avoid government regulation. A wide range of practices are used for this purpose. These include direct promotion of self-regulation, pre-empting government regulation by introducing alternative schemes more favourable to business interests, and diverting attention from issues that might prompt governments to regulate. These are discussed in turn below.

### 5.3.2 Promotion of self-regulation

Self-regulation "concerns efforts by private companies to establish their own rules and policies for operating within a specific domain".<sup>140 p58</sup> Buse and colleagues (2012) made a useful distinction between self-regulation relating to 'market standards' and 'social standards'. Market standards are set when players within an industry agree on

standards to reduce transaction costs and facilitate commerce. An example is standards governing voltages within medical equipment. Self-regulation relating to social standards is generally undertaken in response to concerns raised by consumers or shareholders, or “to the threat of impending public regulation which may be more onerous”.<sup>140 p59</sup> An example is industry agreement on codes of conduct on advertising to children. It is self-regulation regarding social standards that is of interest here.

Business interests typically use the argument that the market – consumers deciding between competing products and services – is more likely to produce good outcomes than is government regulation.<sup>61 p121, 127 p330</sup> The argument is that companies will regulate themselves where necessary in order to retain their customers.

Self-regulation can have social and environmental benefits. Brownell and Warner (2009) cited as an example when an endangered resource is at stake from rogue members of an industry, and the industry moves to increase protection of the resource for its own survival.<sup>187 p268</sup> But it can also be used by industries under threat in an attempt to avoid more onerous, and socially beneficial, regulation that might otherwise be imposed by government. Simon (2011) has documented an example from the food industry in the United States. In 2005, in response to concerns about childhood obesity, the Institute of Medicine recommended that Congress act within two years on advertising less healthy food to children if the food industry failed to make progress through voluntary measures. The industry, in response, created the Children’s Food and Beverage Advertising Initiative in 2006. This consisted of a series of pledges by companies on food marketing to children. Reviews of this initiative by food industry critics found it to be ineffective. Then, in 2009, Congress requested four government agencies to collectively develop voluntary principles for food companies to follow with the hope of curbing harmful food marketing to children. The response from the industry was to set up the “Sensible Food Policy Coalition”. The Coalition, according to Simon, spent \$6.6 million in the first quarter of 2011 alone on lobbying against the development of voluntary codes by government agencies.<sup>188 pp114-6</sup>

In their New Zealand study of political activity by interest groups relating to food marketing to children, Field and Gauld (2011) concluded that “[t]he food industry’s overarching goal was the retention of the industry self-regulatory policy framework”.<sup>189</sup> <sup>p35</sup> The industry’s strategy was to develop a partnership with government to reduce obesity by presenting themselves as a trusted group prepared to share responsibility.<sup>189</sup> The Food Industry Group (FIG) was established in 2004 at a time of increasing NGO calls for regulatory interventions to reduce obesity. FIG’s four main members were the New Zealand Food and Grocery Council, the Association of New Zealand Advertisers, the Communication Agencies Association of New Zealand, and the New Zealand Television Broadcasters Council. FIG’s arguments for industry self-regulation as the best approach to obesity prevention were based around individual choice and the need for education.<sup>189</sup>

### **5.3.3 Pre-empting opposing initiatives**

Front-of-pack nutrition labelling provides a good example of a common industry practice when faced with the threat of regulation: the introduction or promotion of an alternative but less effective version (from a public health standpoint) of what public health advocates have been asking governments to introduce. A similar story can be told in three countries, the UK, the US and Australia. The stories all have the same character, but with different names. In the UK it is ‘Guideline Daily Amounts’ (GDAs), in the US ‘Nutrition Keys’ (later called ‘Facts Up Front’), and in Australia the ‘Daily Intake Guide’ scheme (DIG).

The DIG scheme features later in this thesis where its use by the food industry to try and influence outcomes of the Review is discussed. The purpose of this section is to document the evidence that very similar front-of-pack nutrition labelling schemes have been developed by the food industry in three countries for the same reason: governments were beginning to take seriously public health calls for the introduction of schemes that would enable consumers to – at a glance – distinguish less healthy from more healthy foods. The industry has been strongly opposed to such schemes.



### Guideline Daily Amounts in the United Kingdom

The GDA scheme had its beginnings in 1994 with an approach by the UK Ministry of Agriculture, Fisheries and Food (MAFF) to public health researchers to develop a leaflet that aimed to help consumers make better use of nutrition labelling. *Use your Label: Making Sense of Nutrition Information* was published by MAFF in 1996, and gave 'Daily Guideline Intakes' (DGIs) for fat, saturates, sodium and fibre. The next phase came in 1998 when the Institute of Grocery Distribution, a food industry body, renamed DGIs as GDAs. This led to GDAs for calories, fat, saturated fat, and sometimes sodium or salt being used by some food manufacturers and retailers in leaflets and on food packages.<sup>190</sup> This was followed in 2004 by an IGD-led initiative to update GDAs, widen their use, and communicate information about GDAs to consumers, health professionals and the media.<sup>191</sup> A proposal was also developed by several larger food manufacturers to use GDAs in front-of-pack labelling.<sup>192 p333</sup>

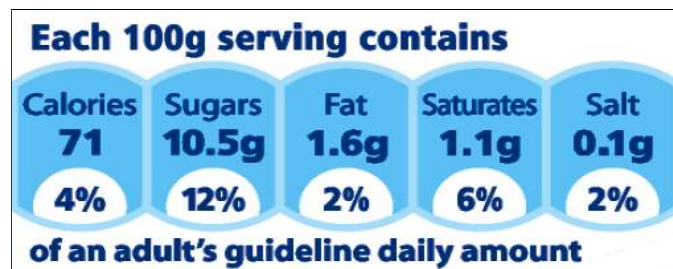
The food industry was not the only UK player that in 2004 was turning attention to nutrition labelling on food. The House of Commons Health Committee, in May of that year, recommended that the Government "introduces legislation to effect a 'traffic light' system for labelling foods, either 'red-high', 'amber-medium' or 'green-low' according to criteria devised by the Food Standards Agency".<sup>193 p62</sup> Also in 2004, the UK Government published a White Paper subtitled "making healthy choices easier" in which it announced that the Food Standards Agency (FSA) would work with the food industry to develop "a clear, straightforward coding system that is in common use, and that busy people can understand at a glance which foods can make a positive contribution to a healthy diet, and which are recommended to be eaten only in moderation or sparingly".<sup>194 p25</sup>

The Nutrition Manager of the UK Food and Drink Federation, in a paper describing the 2004 IGD initiative, set out "to demonstrate the advantages of GDAs over traffic lights",<sup>191 p337</sup> but did not attribute the desire to expand the use of GDAs to the challenge posed by the White Paper. Others outside the food industry were, however, quick to make the link. A Guardian journalist described heavy lobbying of politicians by Kellogg's

in 2006 as part of a “concerted attempt by industry to derail ... traffic light labelling by actively promoting its own rival [GDA] scheme”.<sup>195</sup> Another journalist reported that, in January 2007 and a week before the FSA was to launch a campaign to publicise its traffic light system, a food industry coalition including Tesco, Coca-Cola and Kellogg’s launched a much larger campaign to promote GDAs. The aim, in the journalist’s words, was to ‘derail’ the FSA system.<sup>196, 197</sup> The pattern was repeated in 2010 when, as described in section 5.2.5, the food industry reportedly spent one billion euros in promoting GDAs in a successful attempt to get the European Parliament to reject a traffic light labelling proposal.<sup>183</sup>

Figure 5.1 gives an example of front-of-pack GDA label as used in the UK.

**Figure 5.1 Example of a front-of-pack Guideline Daily Amount label**

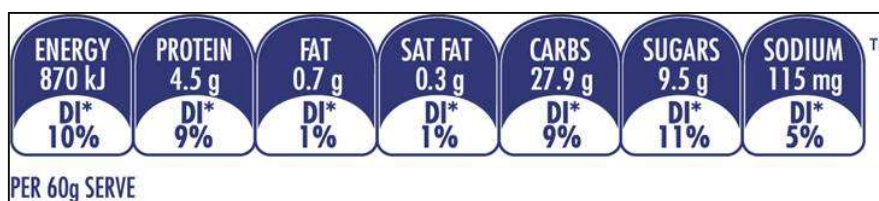


Source: Danone Ltd (UK)<sup>198</sup>

#### The Daily Intake Guide scheme (DIG) in Australia

The front-of-pack Daily Intake Guide scheme (DIG) was introduced into Australia in November 2006 by the Australian Food and Grocery Council (AFGC).<sup>199 p 17</sup> Figure 5.2 gives an example. It is identical in concept to GDAs, showing both weight and ‘percentage daily intake’ (DI) for each ingredient in one serving, the size of which is nominated by the manufacturer. It is different in that it covers a range of both ‘positive’ ingredients such as protein and ‘negative’ ones such as sodium. The GDA example above concentrates on ‘negative’ ingredients.

**Figure 5.2 Example of a front-of-pack Daily Intake Guide label**



Source: Australian Food and Grocery Council<sup>200</sup>

The timing of the AFGC's introduction of the DIG scheme has attracted comment. Magnusson (2010) noted that this occurred just one month after front-of-pack nutrition labelling first reached the agenda of the Australia New Zealand Food Regulation Ministerial Council.<sup>201</sup> At their meeting in October 2006, ministers requested advice as to "whether a uniform front-of-pack food labelling system would be an effective health strategy" and on a range of options "which may include the traffic light labelling system".<sup>202</sup> Most public health-related groups were at that time supporting introduction of an interpretive traffic light system.<sup>203</sup> Interpretive systems provide 'at a glance' front-of-pack information about the healthiness of a product rather than percentage-based information requiring consumer interpretation.

Magnusson drew attention to the welcoming by the AFGC, in 2009, of an Australian Federal Government move to defer any decision on a preferred front-of-pack model for a year. This delay, he argued, would "enable the AFGC to claim that its own already-implemented, non-interpretive scheme has become the industry standard and that any further change would be unnecessary, confusing and disruptive".<sup>201 p7</sup> Gill and colleagues (2013) drew a similar conclusion. They argued that, in response to the challenge posed by possible adoption of a traffic light system by Australian governments, the Australian Food and Grocery Council persuaded the industry to adopt the DIG scheme and implement it widely, making it difficult for governments to roll it back or adopt another system.<sup>203</sup>

### 'Facts Up Front' in the United States

Two large players in the US food industry – the Grocery Manufacturers Association (GMA) and the Food Marketing Institute (FMI) – launched a GDA/DIG look-alike called 'Nutrition Keys' in January 2011. It was later renamed 'Facts Up Front'. Figure 5.3 gives an example.

**Figure 5.3** Example of a front-of-pack 'Facts Up Front' label



Source: Marion Nestle<sup>204</sup>

The GMA and FMI claimed the new labels were developed in response to a request from First lady Michelle Obama, and that the “industry had stepped up to the plate in a big way to help improve public health and combat obesity”.<sup>205</sup> Critics thought otherwise. Instead they saw the scheme as an attempt to pre-empt moves by the Food and Drug Administration (FDA) to establish voluntary guidelines for front-of-pack nutrition labelling.<sup>204, 206</sup> The FDA was waiting for Institute of Medicine (IOM) recommendations requested by Congress on front-of-pack labelling. The IOM had made preliminary recommendations in 2010 that “positive” nutrients” such as vitamins should not appear in the labelling. The FDA was unhappy that this recommendation was ignored in Nutrition Keys. It was concerned that this “might lead consumers to infer that a product with relatively few nutritional benefits is healthy”.<sup>207</sup>

A further point made was that Nutrition Keys was not what Michelle Obama had in mind. A New York times journalist reported that “the industry went its own way after months of talks with the White House and Food and Drug Administration [FDA] broke down”,

and that the “industry sought an endorsement from the first lady for its plan, but did not get one”.<sup>206</sup>

A month before the IOM published its report on front-of-pack labelling requested by Congress in October 2011 the food industry announced ‘Facts Up Front’ as the new name for Nutrition Keys, and announced a \$50 million campaign to bring the scheme alive for consumers and “help them understand and use this important new tool”.<sup>208</sup> Critics were quick to criticise the timing of the food industry initiative.<sup>209</sup>

### Conclusion

Very similar schemes have been developed for what appear to be very similar reasons in three countries, the UK, Australia and the US. Consumers have been provided by the food industry with information about the percentage of recommended daily intake of nutrients in manufacturer-defined servings. In the case of ‘negative’ nutrients such as sodium, these recommendations refer to maximum intake. It is up to consumers to interpret what the percentages mean in relation to a healthy diet. Public health practitioners, on the other hand, have been calling for interpretive systems that provide direct information about the relative healthiness of a product. Governments in the three countries have been increasingly moving towards the public health position. This has alarmed large food manufacturers with products that would not look good if their contribution to a less healthy diet was explicitly recognised on the front of the pack. There is evidence from all three countries that the enthusiasm of the food industry for non-interpretive systems results from a strategy to avoid interpretive systems.

While the literature search behind this thesis found no direct evidence, there are reasons to suspect that the similarities in the non-interpretive systems across the UK, Australia and the US are not accidental. The large presence of the same multinational food companies in all three countries provide a clue. As an example Kellogg’s, prominent in promoting GDAs in the UK and Europe, is a member of the GMA in the US and a founding member of the AFGC in Australia.<sup>210</sup> The president of Kellogg’s North America, in 2012, was on both the GMA Industry Affairs Council and the FMI Associate Member Advisory Board.<sup>211</sup>

### 5.3.4 Diverting attention

Another means used by business interests to reduce the likelihood of government intervention is to divert attention to a different issue from that identified by public health advocates. Two common practices used by the food industry for this purpose are to divert attention from diet to physical activity, and from products to product users.

Food companies, in promoting physical activity, are not only concerned to build their reputation as good corporate citizens with the general public. They also have a keen interest in influencing governments. In considering measures to reduce the burden of non-communicable diseases, governments weigh up interventions both to improve diets and increase physical activity. Food companies under threat as purveyors of unhealthy products would like governments to focus on the latter rather than the former. One way of doing this is to emphasise the importance of physical activity as a major contributor to obesity and non-communicable diseases, sometimes with the implication that food is less important.<sup>212 p261</sup>

The food industry practice of promoting physical activity is prevalent in New Zealand. McDonald's has supported NZ Soccer and NZ Touch.<sup>213</sup> Nestlé, manufacturer of iconic sugary drink Milo, commissioned a widely-publicised report on the importance of children's play.<sup>214</sup> Finally, Coca-Cola New Zealand introduced Move60, an initiative "designed to motivate Kiwis to be active for 60 minutes a day".<sup>215</sup>

Another way in which Coca-Cola has promoted physical activity is through funding sympathetic academics. As an example, a Forbes journalist<sup>216</sup> has drawn attention to an academic paper claiming that reductions in physical activity "largely explain the marked increased prevalence in obesity noted during recent decades".<sup>217 p1346</sup> The lead author of the paper had "served as a consultant and speaker on fitness/obesity for the Coca-Cola Company", while two of the remaining four authors had "served as consultants for weight loss and fitness companies and for the Coca-Cola Company, which has also provided them un-restricted research grants".<sup>217 p1345</sup>

A second diversionary tactic used by industries with products challenged on health grounds is to divert responsibility for adverse health outcomes from products to product users. This is covered in the next section.

## ***5.4 Business framing of issues relating to public health***

### **5.4.1 Introduction**

Framing, as used here, refers to putting different perspectives on the same set of facts or events through use of wording that activates values that are important for the recipient of the communication.<sup>218</sup> Framing is most effective when it taps into overarching values such as freedom, fairness, responsibility and equality – what Dorfman and colleagues (2005) call “the core values that motivate us to change the world or not change it”.<sup>219 p324</sup>

A literature review of the barriers and enablers of nutrition policy change by Cullerton and colleagues identified industry framing of policy issues as a significant barrier to advancing public health policy initiatives.<sup>220</sup> The same authors, in a later paper, argued that reframing policy issues could be an effective advocacy strategy.<sup>221</sup> Frames were defined as cognitive shortcuts used to understand complex information more efficiently. They worked by “selecting and emphasising attributes that communicate why an issue might be a problem, who is responsible for it, and what should be done about it”.<sup>221 p8</sup> The authors cited protecting the health of children, fairness and social justice, and highlighting costs arising from policy inaction as among frames that had been successfully used.

The key values, when business and public health interests take opposing positions over an issue, usually relate to what have been described as ‘market justice’ (appealed to by business) and ‘social justice’ (appealed to by public health). As Dorfman and colleagues put it:

The statements corporate spokespeople make in the face of public health challenges are remarkably similar. Statements from various industry spokespeople

opposing public health measures generally reflect ... market justice values: first, what's needed is more personal responsibility, not government regulation; second, as a precursor to taking personal initiative, education can solve the problem; and third, if the issues involves children or youth, this is really the parent's responsibility.<sup>219 p330</sup>

Social justice values, on the other hand, include fairness, collective responsibility and equity.

The frames through which people view an issue are crucial to the position they take on it. Frames, it has been said, trump facts.<sup>219 p325</sup> The frames through which issues are presented can also be highly influential on political decision making. Writing in 1998, Menashe and Siegel argued that in the United States the success of the tobacco industry's framing in terms of personal freedom, civil liberties and individual rights had successfully stymied calls for government regulation from tobacco control advocates.<sup>222</sup>

Since frames are fundamentally about values it is not that one framing of an issue is right and another is wrong in any objective sense. On the big issues competing frames typically arise from competing ideologies. No attempt is made here to argue the merits of one framing against another. The intention is instead to describe frames commonly used by industry when products are challenged from a public health perspective (s5.4.2 to 5.4.8). The purpose is to create a checklist for considering, in Study 2 (s6.5.6), frames used by the food industry in submissions to the Review.

#### **5.4.2 Personal and parental responsibility**

Brownell and Warner (2009) have described the 'personal responsibility' frame used by industries challenged by public health as "an organized corporate strategy that shifts responsibility from the parties who make and market products to those who use them".<sup>187</sup> Among those using this frame have been the tobacco,<sup>187 p266</sup> food,<sup>223</sup> alcohol<sup>224 p250</sup> and motor vehicle<sup>225 p244</sup> industries.



The implementation of this strategy was very much in evidence in 2006 submissions to New Zealand's Health Select Committee Inquiry into Obesity and Type 2 Diabetes.<sup>6, 7</sup> White (2007) reported that nine of 21 submissions from the food and advertising industries placed the onus on individuals to make the right choices in order to reduce obesity. None of the 291 submissions from other sectors did this. Eleven of the 291 specifically opposed focusing on individuals.<sup>7 p20</sup>

When it comes to children, McDonald's put the industry case for personal responsibility succinctly in their submission to 2006 Inquiry. "We believe that food choice is a matter for the individual, or in the case of children, for parents or caregivers who have a personal responsibility to exercise that choice wisely."<sup>7 p21</sup>

The personal responsibility frame has been picked up in the media and found favour with some politicians.<sup>118</sup> McKay (2011) has described "the framing of the obesity problem [in Australia] (by the media, politicians and industry) as the result of the failures of individuals to exercise personal responsibility, or, in the case of childhood obesity, parental responsibility"<sup>226 p897</sup> as a major barrier to the pursuit of legislative solutions.

#### **5.4.3 Personal freedom, or freedom of choice**

Another powerful frame that can attract politicians and others to the industry position is that of personal freedom, or freedom of choice. Use of this frame involves focusing on the right of individuals to choose the products they wish to consume, and the circumstances of their consumption. It is associated with 'market individualism', a position that emphasises individual autonomy, including the freedom to make 'wrong' choices providing they do not harm others. Individuals should, according to this view, be free to make choices within the market and accept responsibility for the consequences of their choices.<sup>227</sup>

The wide appeal and power of this framing was well illustrated in a study of tobacco control legislation in the United States (Jacobson and colleagues, 1993).<sup>228</sup> The authors argued that during the 1980s the tobacco industry attempted to shift the debate from the credibility of the scientific evidence (which they were losing) to individual rights

issues. The new strategy involved “equating smoking behavior with other personal liberties, such as freedom of speech and protection against racial discrimination”.<sup>228 p802</sup> Central were arguments that smokers had rights relating to their own personal and social behaviour, including freedom from discrimination because they chose to smoke. Such arguments resonated with an ‘unusual coalition’ including civil liberties advocates, libertarians, and conservatives who were generally supportive of business interests. Jacobson and colleagues observed that, in the six states in their study, tobacco control legislation made progress when public health issues dominated the debate, but when the debate shifted to personal freedoms further legislation stalled.

An analysis of submissions made on New Zealand’s Public Health Bill in 2008 (White, 2008)<sup>3</sup> found freedom of choice framing very popular among industry opponents of the Bill’s provisions relating to prevention of non-communicable diseases. Twenty of the 204 submissions argued that the Bill would or could restrict freedom of choice, 19 of which were from industry. Of these 19, eight used the same or virtually the same wording, suggesting an organised business response to the Bill.<sup>3</sup>

#### **5.4.4 Educating consumers as the main solution**

The emphasis on personal responsibility and freedom of choice means, for industry, that the solution to public health concerns about products lies in changing behaviour so that individuals make healthy choices. Education addresses public health concerns by helping individuals develop the tools to make responsible decisions. More and better consumer education, so industry says, is the answer.<sup>219 pp330-1</sup>

The Food Industry Group put the case for education as follows in its 2006 submission to New Zealand’s Health Select Committee Inquiry into Obesity and Type 2 Diabetes:

At the centre of the solution is the individual... Given the range and availability of food items on offer, the key is in giving people the knowledge and ability to make healthy choices. It comes down to teaching people the basic principles of how much they consume vs. how much they move.<sup>7 p21</sup>

#### **5.4.5 The ‘nanny state’**

Another aspect of placing responsibility for their health solely on individuals is the denigration of efforts by the state to protect health using the law. Labelling such efforts as ‘nanny state’ is an attempt to influence the public and politicians against the use of regulations designed to protect consumers from unhealthy products.<sup>176 p674</sup> The term is used to suggest that, by regulating, governments impinge on personal freedom.<sup>223 p1487</sup> It has become a “special favourite of tobacco companies and their supporters”.<sup>229 p426</sup>

Hoek (2008) attributed early use of the term ‘nanny state’ to right wing politicians and media commentators. It then came into use by business advocacy groups to counter calls for legislation such as banning the marketing of unhealthy food to children. The message, Hoek contended, is that the ‘nanny state’ is one in which people surrender personal responsibility and expect governments to provide solutions. As Hoek summarised it, opponents of regulation use the term when accusing governments “of trying to assume a decision-making role they argue belongs with individuals”.<sup>230</sup>

#### **5.4.6 Industry as moderate and reasonable**

Industry organisations, when their products are under threat because of concerns about their negative impact on public health, try hard to portray their positions and actions as moderate and reasonable. This has been a tobacco industry strategy.<sup>231 p3</sup>

As part of the moderate and reasonable approach, industry groups sometimes like to portray themselves as recognising there is a health issue associated with their products and portraying themselves as working to address it. This has been a food industry favourite in New Zealand with respect to obesity, where the food and communications industries has had some success in establishing that they are ‘part of the solution’. These industries formed the Food Industry Group (FIG) for this purpose. FIG’s strategy was to develop a partnership with government to reduce obesity by presenting itself as a trusted group prepared to share responsibility. FIG referred to itself as being ‘part of the solution’ to improving New Zealand health outcomes.<sup>232</sup> FIG’s major goal is stated as “to do all that is possible to encourage all sectors of the food industry to create

commercially successful products and services that will make a positive contribution to the health of New Zealanders".<sup>232 p4</sup> Some companies in New Zealand adopted this frame, including Coca-Cola which stated it recognised concerns about obesity and was working to be part of the solution.<sup>232</sup>

#### **5.4.7 Industry opponents as radical, extremist, or not credible**

A frame used by the tobacco industry has been to depict tobacco control advocates as extremist, radical and not credible. The industry painted opponents as adopting unacceptable positions, in contrast to their own moderate and reasonable positions.<sup>231 p3</sup>

The same approach has been taken by the Food Industry Group (FIG) in New Zealand. As stated in their 2011/12 annual report:

Where a balanced view was required in the media, FIG prepared industry responses on issues [relating to food and health]... It was disappointing to observe the tendency of local academic organisations publicizing unsupported and unscientific thinking as if it were quality research ... [with] not a peer review in sight. This approach may be useful in self-promotion, fund-raising and supporting hobby horses, but it totally lacks credibility and makes no contribution to solving the real problem.<sup>233 p1</sup>

#### **5.4.8 There are no bad foods**

The frames discussed in the preceding six sections can all be used across different industry sectors when products are challenged from a public health perspective. This last one is specific to food. It is claimed that there are no bad or unhealthy foods, only bad or unhealthy diets. This is a version of the ubiquitous personal responsibility argument: it absolves the product and blames the consumer of the product.

A typical use of way in which this framing is used is illustrated by a statement made by Nestlé New Zealand in 2008:

Nestlé strongly supports the philosophy that there are good and bad diets, not good and bad foods, and that within good diets a role exists for treats. Nestlé aims to offer a range of products that fit within a balanced diet.<sup>232 p24</sup>

The claim there are no bad foods is very widespread, and can fairly be described as a ‘mantra’.<sup>234</sup> And like other frames discussed above, it has been picked up and used by others outside the industry under challenge. Brownell and Horgan (2004) pointed to, for example, the position statement of the American Dietetic Association (ADA) that “all foods can fit into a healthy eating style”.<sup>212 p16</sup> The ADA statement was cited by the food industry including the Grocery Manufacturers of America and the Sugar Association.<sup>212 p263</sup> As Nestle (2003) pointed out, the ADA has “especially close” relations with the food industry. Many of its members are employed by food companies, and it is the recipient of substantial food industry funding.<sup>235 p126</sup>

The British House of Commons Health Committee, reporting in 2004 on its inquiry into obesity, said the following:

During the course of this inquiry, the food industry has made constant use of the formulaic argument that ‘there are no such thing [*sic*] as unhealthy foods, only unhealthy diets’, a phrase we have also, perhaps surprisingly, heard from sports officials and Government ministers. But it is patently apparent that certain foods are hugely calorific in relation to their weight and/or their nutritional value compared to others.<sup>193 p25</sup>

#### **5.4.9 Conclusion**

All the frames discussed above share one characteristic: they are a way of saying there is no need or case for government regulation. Individuals are personally responsible for their health, so it would be wrong to imply industry responsibility by imposing regulations. Further, regulations would restrict personal freedom. Instead of regulating industry, the focus needs to be on educating consumers. Regulation would be a ‘nanny’ state response that interfered with the responsibility and right of consumers to make their own choices. And since there are no bad foods, there is no case for regulations aimed at reducing the consumption of particular products.

## **5.5 *Business practices not considered in the case study***

### **5.5.1 Introduction**

This section briefly summarises business practices described in the literature that have been used when industries are under threat from public health advocacy, but which were not considered for this study (Table 5.1). Given the time and resources available it proved too difficult to find out the extent to which they may have been used by the food industry in relation to FoPL during and following the Review. This is relevant to Research Question 2 (influences shaping FoPL decisions) as it makes it harder to assess the influence of business agency power on Review outcomes.

Evidence on many of these practices is not usually available in the public domain, including in Australia and New Zealand. Much of the evidence has come to light because companies have been forced to disclose information. Most notably, a vast trove of tobacco industry documents became publicly available through litigation in the United States.<sup>231</sup> There is evidence that similar strategies and tactics to those used by the tobacco industry have also been used by the international food industry.<sup>176, 187</sup>

### **5.5.2 Building relationships with political decision makers**

Good relationships with relevant policy makers provide a useful context for influencing government decisions. This is particularly so if the relationship involves some sense of obligation on the part of policy makers to return a favour. When agents deliberately set out to create good relationships with policy makers in order to increase their chance of favourable treatment they are engaging in practices which, if successful, reflect agency power.

Business practices with this intention can include gifts, restaurant meals and expenses-paid trips.<sup>235</sup> Political donations are another avenue.<sup>174, 236-238</sup> It has been suggested that donations by companies can be seen as ‘entry fees’ that enable them to have access to policy makers and utilise other forms of influence on government decisions.<sup>239, 240</sup>

### **5.5.3 Attempting to influence elections**

A second reason that interest groups make political donations is to assist the election of governments or politicians with policies likely to further their interests. Ways in which this has occurred In the United States include donations to campaign funds, advertisements that purport to be about an issue but which may favour a particular candidate or party, and attempting to influence the voting intentions of employees.<sup>174</sup>

### **5.5.4 Managing external relationships**

All organisations want to operate in an environment that facilitates the attainment of their goals and objectives. For big business this means not just responding to the political and social environment, but attempting to shape it. This management function is commonly called 'corporate public affairs' (CPA), at least in the United States.<sup>174</sup>

#### *5.5.4.1 Public relations*

Public relations (PR) is a part of CPA, and covers a wide range of activities. Business critics have cited a long list of PR practices sometimes used to advance business interests at the expense of public health. Table 5.2 lists 11 of these, with an example for each one.

#### *5.5.4.2 Corporate social responsibility*

Corporate social responsibility (CSR) can have some very different meanings, but generally the term refers to a responsibility on companies to have regard to the welfare of society as a whole as well as their own interests. CSR activities can range from those entirely driven by their contribution to maximising profits, through those that address externalities that have social costs, and to those that result from a genuine wish to make a contribution to the public good.<sup>126 pp138-42, 174, 254</sup> Behaving well is not the only means of acquiring the good reputation that CSR activities seek. Successfully putting a 'spin' on actions to make them appear in the public interest when they are not can also help businesses.<sup>240</sup>

**Table 5.2 Business public relations practices sometimes harmful to public health**

Description	Example
1 Focusing relentlessly on key messages such as personal responsibility or ‘nanny state’ when products are under threat <sup>176 p674, 187, 223, 240 p32</sup>	13 of 19 submissions from the food industry on the NZ Public Health Bill in 2008 claimed clauses in the Bill would restrict freedom of choice. <sup>3</sup>
2 Using people highly trusted by the public (including health professionals) as spokespersons <sup>240 p29</sup>	US food manufacturers and others used a young mother in a campaign to defend Bisphenol A (BPA) as a can liner against claims it was harmful. <sup>241 p111</sup>
3 Forming partnerships with NGOs including charities <sup>242 p120</sup>	In 2013 Coca-Cola launched its Move60 programme in NZ in partnership with BikeNZ (cyclists), a youth development NGO. <sup>215</sup>
4 Sponsoring health and nutrition organisations <sup>243, 244</sup>	In 2018 Dieticians NZ’s corporate partners included Nestlé NZ. <sup>245</sup>
5 Sponsoring popular activities or events <sup>246 p169</sup>	Coca-Cola Christmas in the Park (supporting Youthline) has 25th anniversary in Auckland. <sup>247</sup>
6 Promoting health in biased and self-serving ways such as food companies focusing on physical activity <sup>248</sup>	The Australian Food and Grocery Council launched “a nationwide program inspiring active and healthy living” that ignores less healthy food <sup>248</sup>
7 Issuing voluntary codes of conduct to reduce the likelihood of government regulation, but failing to properly address the problem <sup>242 p130</sup>	11 transnational food companies committed to the “EU pledge” to restrict food marketing to children under threat from government regulation, but their voluntary code is ineffective. <sup>249</sup>
8 Running paid advertisements for PR purposes <sup>240 p31, 242 p127</sup>	When its drug Vioxx was belatedly recalled after causing strokes, Merck ran ads claiming the action was about putting patients first. <sup>242 p127</sup>
9 Engaging PR companies specialising in defending attacks against harm caused by products (the ‘product defence industry’) <sup>250 pp45-59</sup>	PR company Hill and Knowlton, with a long history of advising the tobacco industry and polluters in the US, <sup>250 pp45-6</sup> boasted that it had changed UK government thinking on traffic light labelling on behalf of food manufacturer Kellogg’s. <sup>195, 252</sup>
10 Painting evidence that products are harmful as an outcome of ‘junk science’ <sup>240 p31</sup>	Tobacco company Phillip Morris instigated a “sound science” programme designed to discredit epidemiological research on harm from tobacco. <sup>253</sup>
11 Activities under the guise of corporate social responsibility <sup>240 p32, 242 p120, 246 p167</sup>	See section 5.5.4.2.



CSR activity is common in industries with products detrimental to public health. These industries include tobacco<sup>231 p5, 255, 256</sup> and alcohol.<sup>257</sup> The food industry, too, provides many examples of companies that produce unhealthy products pushing CSR. PepsiCo, the largest food and beverage manufacturer in the United States, and second largest in the world, is a prime example. PepsiCo's core products are generally unhealthy. Nevertheless, the company has positioned itself as a national leader in CSR, both in general and as in relation to health and nutrition.<sup>188, 258</sup>

#### **5.5.5 Using the media**

The media are of great importance to business across the spectrum of CSR, public relations, and public affairs generally. Lerbinger devoted five of 15 chapters to media strategies in his 2006 book on corporate public affairs.<sup>174</sup> Table 5.3 lists 13 practices used by business that he described.

#### **5.5.6 Working with, enlisting or creating allies**

The formation of industry associations for political purposes is widespread. These are typically composed of companies producing similar products or services, or are organised around particular functions (such as employer's associations).<sup>259</sup> They may be national or international.<sup>224</sup>

##### *5.5.6.1 Enlisting allies*

Allies are particularly valuable in the political sphere for industries under threat from public health because their products are deemed harmful. The general public – support from which is sought by all interest groups – is arguably the most powerful ally of all. Building and demonstrating 'grassroots' support is a "central strategic tool" for industries engaged with political issues.<sup>174</sup> In addition, scientists, academics and health professionals who cast doubt on evidence of harm are particularly sought as allies,<sup>231, 260, 261</sup> as are professional associations.<sup>187, 235, 240, 262</sup>

**Table 5.3 Business practices using the media for managing external relationships**

	Practice
1	'Jump starting' news stories, for example by arranging for a third party such as an expert to speak up on an issue of concern to the organisation <sup>174 p100</sup>
2	Producing 'ghost written' stories for the media <sup>174 p101</sup>
3	Fostering and rewarding sympathetic journalists <sup>174 p106</sup>
4	Providing the media with resources including media releases <sup>174</sup>
5	Using the internet proactively – websites, blogs etc. <sup>174 p212</sup>
6	Monitoring the internet for negative stories and responding early <sup>174 p104</sup>
7	Pre-emptive communications - getting in first when criticism is seen coming <sup>174 p102</sup>
8	Setting conditions for cooperation with the media <sup>174 p109</sup>
9	Threatening to drop advertising <sup>174 p115</sup>
10	Making formal complaints about media behaviour <sup>174 p173</sup>
11	Placing gagging orders on the media <sup>174 p336</sup>
12	Suing the media <sup>174 p185 p185 p185 p185</sup>
13	Bypassing the media by directly communicating with stakeholders <sup>174 p209</sup>

#### 5.5.6.2 *Creating front groups*

Enlisting allies in pursuit of a political objective is a legitimate strategy shared by all interest groups. It is another matter to create allies (front groups) as this generally involves an intent to deceive. Creating front groups has been a widely used strategy by the tobacco,<sup>175, 246 p171</sup> food<sup>251 p190</sup> and beverage<sup>263</sup> industries. It is sometimes called 'astroturfing'.<sup>264-266</sup> AstroTurf is a brand of artificial grass, hence 'astroturfing' is used to refer to creating artificial 'grassroots' support.<sup>267</sup>

New Zealand bloggers exposed, in 2010, both the New Zealand Association of Community Retailers and the New Zealand Association of Convenience Stores (ACS) as

front groups for major companies producing unhealthy products.<sup>268-270</sup> ‘Premier members’ of the ACS included Coca-Cola, Cadburys, Mars, Nestlé, British American Tobacco and Imperial Tobacco.<sup>271</sup> Both groups purported to represent small retailers and issued press releases critical of tobacco control measures.

#### *5.5.6.3 Think tanks*

Think tanks began as organisations providing scholarly analysis of issues, but there has been a trend for them to become less scholarly and more polemical and ideological.<sup>174</sup>  
p242, 251 p219 In Australia, think tanks, often funded by business donations, have been described as “the major propagators ... of the public choice, deregulatory approach to public policy” and as having been “crucial in redirecting public policy thinking within all major parties”.<sup>272</sup> pp37-88

### **5.5.7 The misuse of policy-relevant science**

Calls for science-based public health interventions typically arise when there is research evidence showing that some feature of the environment poses health risks to a population. It is legitimate for affected industries to challenge such evidence following scientific norms and procedures. There is, however, abundant evidence of industries going beyond this to misuse science to the detriment of public health. Most of this evidence comes from tobacco company documents now in the public domain following lawsuits in the United States. The food, beverage and alcohol industries have also been found to have misused science.<sup>176, 235, 273</sup>

Opportunities for the misuse of science are especially prevalent for industry-funded research. The tobacco,<sup>274, 275</sup> alcohol,<sup>257</sup> food,<sup>235</sup> beverages,<sup>276, 277</sup> pharmaceutical<sup>278</sup> and asbestos<sup>279</sup> industries all provide examples where this has occurred.

Advocates for particular policies who misuse science may do so at any stage of the process, from influencing research prior to publication (Table 5.4), what is published (Table 5.5), and the interpretation of both individual studies (Table 5.6) and the literature as a whole (Table 5.7).

**Table 5.4 Business influences on policy-relevant research prior to publication**

Description	Example
1 Funding sympathetic scientists likely to produce industry-friendly results to conduct research <sup>187 pp278-99, 251 pp82-55</sup>	Scientists who consulted on physical fitness and for Coca-Cola were funded by Coca-Cola to review research on obesity. <sup>216, 217</sup>
2 Funding research designed to produce industry-friendly results <sup>251 pp80-22, 280</sup>	Manufacturers of asbestos brake linings funded research to support the claim that the linings never caused mesothelioma. <sup>279</sup>
3 Guest authorship and ghost writing of funded research <sup>176 p673, 251 pp77-9</sup>	Merck contracted with medical publishing companies to write manuscripts when one of their drugs was under attack, and recruited academics to be the authors. <sup>278</sup>
4 Influencing the design, analysis and reporting of funded research conducted by purportedly independent scientists <sup>251 pp65-76</sup>	In a 2005 survey of US scientists, 15% of the 3247 respondents admitted they had changed the design, methodology or results of a study under pressure from a funder. <sup>281</sup>
5 Establishing or funding organisations to do industry-friendly research <sup>251 p80, 275, 282</sup>	The tobacco industry created an organisation called Associates for Research in the Science of Enjoyment (ARISE). <sup>283</sup>

**Table 5.5 Business influences on the publication of policy-relevant research**

Description	Example
1 Suppressing or delaying publication of unwelcome research results <sup>251 pp97-127, 275 p204</sup>	A pharmaceutical company forced an industry-funded researcher to withdraw a paper from publication by threatening legal action. <sup>251 p88</sup>
2 Using industry-sponsored symposia as publication vehicles <sup>251 p197, 275 p203</sup>	The proceedings of 11 symposia on second-hand smoke were published between 1965 and 1993, none of which were peer-reviewed. <sup>275 p203</sup>

**Table 5.6 Business practices influencing the interpretation of published research**

	Description	Example
1	Demanding that research into harm caused by products meets unrealistically high methodological criteria – the ‘sound science’ vs ‘junk science’ framing <sup>251 pp211-2, 253, 284</sup>	Tobacco company Phillip Morris promulgated ‘good epidemiological practices’ to make it impossible to ‘prove’ that second-hand smoke was dangerous. <sup>253 p1749</sup>
2	Misrepresenting the findings of research with unwelcome results <sup>280 p472, 285</sup>	The tobacco industry cited a major review as evidence that second-hand smoke did not cause cancer, contrary to the review’s conclusions. <sup>285 p1257</sup>
3	Influencing the weight given to industry-funded research by hiding the funding behind third parties <sup>282 p288</sup>	Tobacco industry funding for research in Germany was distributed via the “supposedly independent” Research Council on Smoking and Health. <sup>282 pp21-2</sup>
4	Influencing the weight given to industry-funded research by authors failing to disclose their conflict of interest (links with the funder) <sup>280, 286</sup>	Reviews of links between vinyl chloride (VC) and cancer in which authors did not disclose funding from the VC industry cast doubt on links claimed to exist in reviews not funded by the industry. <sup>280 pp472-3</sup>
5	Harassing scientists producing unwelcome research results in an attempt to reduce their effectiveness, including by threatening or taking legal action <sup>251 p157, 287</sup>	A tobacco company took legal action against a scientist who published research suggesting cigarette advertising was designed to appeal to children, with the result that he spent “a great deal of time and effort” fighting the action. <sup>251 p173</sup>

**Table 5.7 Business influences on the balance of the research literature**

Description	Example
1 Fostering unjustified uncertainty or controversy about unwelcome research findings <sup>250, 275 pp200-1, 288</sup>	As a tobacco executive famously said, “[d]oubt is our product since it is the best means of competing with the ‘body of fact’ that exists in the minds of the general public ... [and is] also the means of establishing a controversy”. <sup>250 px</sup>
2 Claiming that products are not in fact harmful against strong evidence to the contrary <sup>231 Table 1, 288</sup>	The tobacco industry established a worldwide programme to pay scientists to publish research supporting the assertion that second-hand smoke was not harmful. <sup>246 p165</sup>
3 Commissioning books and review articles to counter unwelcome calls for public health interventions or claims that products are harmful <sup>251 pp199-202, 280 pp470-1</sup>	The Food Industry Group, set up when the Health Committee of the NZ Parliament was inquiring into obesity, commissioned what they called “a major review of existing global data on the causes and treatment of weight gain and obesity”. <sup>213, 289</sup> Reviewers considered the study to be of poor quality. <sup>290, 291</sup>
4 Biasing the weight of the literature in favour of industry through numerous publications of industry-funded research <sup>280 pp470-1, 282 p27</sup>	A review of tobacco influence on German science suggested industry-funded research was so extensive it introduced “serious bias” into published research and probably influenced scientific consensus in Germany. <sup>282 p27</sup>
5 Biasing the weight of the literature by heavy citing of other industry-funded research or documents including letters to journals <sup>280 p473</sup>	“To get its views into public commentary on risk assessments or into the lay press, the tobacco industry has cited letters to the editor as if they were peer-reviewed journal articles.” <sup>275 p204</sup>

### **5.5.8 Using the law**

When it can be achieved, there can scarcely be a more effective means of shaping the context in which government decision making occurs than by influencing the legal framework under which decisions are made. The food industry's successful campaign to shape European food labelling legislation in their favour (s5.2.5) is one example of decisive business influence on legislation. International, regional and bilateral trade agreements provide another legal avenue through which business interests can influence government decisions in their favour.<sup>224, 240</sup> A further business tactic that has been used in response to public health advocacy is to bring, or threaten to bring, lawsuits against critics.<sup>235, 242, 251</sup>

## **5.6 Summary**

This chapter identified and briefly described business practices aimed at influencing governments to make decisions that helped protect businesses when their products were under threat from public health measures. Success from such business practices, when they are intended to directly influence government decisions and policies, including the context that shapes these, constitutes business 'agency power'.

Business practices were grouped under nine broad headings (Table 5.1). This table was designed to provide a checklist for seeking examples of food industry attempts to use agency power with respect FoPL during and following the Review. This chapter thus contributes to answering Research Question 2 (influences shaping FoPL decisions during and as a consequence of the Review).

It was beyond the resources of this case study to examine all the practices identified in Table 5.1. It was therefore decided to focus on three broad practices where evidence was available using the methods described in Chapter 2. These are making direct representations to governments (lobbying), reducing the likelihood of government regulation, and the framing of issues relating to public health. The remaining six broad practices are summarised to illustrate the large range of practices aimed at protecting

businesses when challenged by public health advocates. The extent to which these could have also contributed to FoPL outcomes, and thus business agency power, remains unknown, and remains an area for further research. The effect of the limits on the range of practices investigated in this study is considered in the Discussion (s8.5.2).



## **Chapter 6**

### **The Review of Food Labelling Law and Policy**

#### ***6.1 Introduction***

This chapter is the first of two reporting the results of the issues investigated in this study. It begins by reporting results from interviews with key informants (s6.2) that provides context for informant information used later in both chapters.

The story about the Review of Food Labelling Law and Policy (the Review) begins by reporting some of the institutional context in which it took place (s6.3), and then traces its course from its origins through to its establishment in 2009 and report in 2011 (s6.4). Both the institutional context and the Review's origins provide information relevant to answering Research Question 2: influences shaping front-of-pack nutrition labelling (FoPL) outcomes during and as a consequence of the Review. Also addressed is the first part of Research Question 1 (food industry and public health positions on nutrition labelling issues considered as part of the Review). This is done through tracing the course of the Review from its consultation phase (s6.5) to its Report (s6.6). The chapter concludes by reporting food industry practices directed at influencing the Review up until December 2011 when the Review Panel released its report (s6.7).

The second results chapter (Chapter 7) reports on the FoPL outcome of the Review – the Health Star Rating system.

#### ***6.2 Interviews with key informants***

##### ***6.2.1 Introduction***

This chapter and the next one report information obtained from key informant interviews. The outcome of requests for interviews and the characteristics of key informants are reported here.

## 6.2.2 The outcome of requests for interviews

Nine of 13 requests for interviews made to potential New Zealand informants were accepted, as were 14 of 18 requests to potential Australian informants (Table 6.1). All three New Zealanders declining requests had made submissions to the Review opposing traffic light labelling. Both Australians declining submissions were officials. One New Zealander (a prominent food industry leader) and two Australians failed to respond to repeated requests for an interview.

Table 6.1 compares acceptances, declines and no replies across four groups: those classified as ‘supporters’ or ‘opponents’ of traffic light labelling (s6.5.5.5), other persons from public health, members of the Review Panel (s6.4.5.2) and government officials.

**Table 6.1 Outcomes of requests for interviews**

Group	<i>New Zealand</i>				<i>Australia</i>				Grand total
	Accept	Decline	No reply	Total	Accept	Decline	No reply	Total	
<i>Group 1:</i>									
Supporters	4	0	0	4	6	0	0	6	10
Opponents	1	3	1	5	1	0	0	1	6
<i>Group 2:</i> Other public health	1	0	0	1	2	0	0	2	3
<i>Group 3:</i> Panel members	0	0	0	0	3	0	1	4	4
<i>Group 4:</i> Officials	4	0	0	4	2	2	1	5	9
Total	10	3	1	14	14	2	2	18	32

### 6.2.3 Characteristics of key informants

Four of the 24 persons accepting requests for interviews were not interviewed through a variety of circumstances. An interview with a New Zealand official did not proceed because of later doubts from both parties that it would produce much of value. One Australian interview could not be arranged because of illness, and two arranged Australian interviews did not proceed following last-minute alternative demands on the time of the potential informants. As a result nine interviews were conducted in New Zealand and 11 in Australia.

Table 6.2 shows, for both New Zealand and Australia and the same groups as in Table 6.1, whether key informants consented to be named in the study report. Australian informants were significantly more likely to consent than were New Zealand informants

**Table 6.2 Interviews conducted and consent to be named in reports**

Group	<i>New Zealand</i>			<i>Australia</i>			Grand total
	Named	Not named	Total	Named	Not named	Total	
<i>Group 1:</i>							
Supporters	0	4	4	4	0	4	8
Opponents	0	1	1	1	0	1	2
<i>Group 2:</i> Other public health	0	1	1	2	0	2	3
<i>Group 3:</i> Panel members	0	0	0	3	0	3	3
<i>Group 4:</i> Officials	3	0	3	1	0	1	4
Total	3	6	9	11	0	11	20

$\chi^2(1, N = 20) = 10.47, p < .001$ ). A possible reason for this difference is discussed in Chapter 8 (s8.3.4.2).

All Australian informants consented to be named in reports, in some cases subject to their approval of any text or quotations in the study report attributable to them. Only the three officials among the nine New Zealand informants agreed to be named (Table 6.2). All eight informants from Group 1 in Table 6.2 previously classified from their submissions as supporters expressed continued support for traffic light labelling during their interview. Both informants previously classified as opponents expressed continued opposition.

### ***6.3 The institutional context for the Review***

#### **6.3.1 Introduction**

This section reports evidence related to how institutional arrangements such as the regulatory frameworks established by governments in Australia and New Zealand, membership of the Council of Australian and New Zealand food ministers, and the responsibilities and roles of government agencies in both countries, had crucial influences on the Review and its outcomes (Research Question 2).

One issue of particular interest for Research Question 2 is, in New Zealand, whether there has been a different ‘food regulation institutional bias’ than in Australia, and if so how this affected the outcomes of the Review. A case can be made that institutional arrangements relating to food regulation have favoured the food industry over public health interests more in New Zealand than in Australia (s8.3.5.4). Some of the detail provided in this chapter provides relevant evidence.

The food regulation relationship between Australia and New Zealand explains much of the institutional context for the Review, particularly for New Zealand. In February 2010 a panel appointed by the Australian Government, and consisting entirely of Australians, made a series of recommendations about food labelling law and policy intended to apply in both countries.<sup>292</sup> The sections that follow explore the background of this apparent

loss of sovereignty for New Zealand, and provide evidence of the role of political arrangements in influencing the relative power of the food industry and public health to influence policy.

The story begins with New Zealand's sustained interest in "closer economic relations" (CER) with Australia (s6.3.2). An outcome of this interest was the 'Food Treaty' – an agreement between the two countries to jointly develop food standards. Current arrangements between the two countries as a result of CER and the Food Treaty are outlined next (s6.3.3). These arrangements provide much of the context in which the Review took place. Other institutional and political factors relevant to the Review include the regulatory environment in both Australia and New Zealand (s6.3.4), and the arrangements made in recent years regarding the location of food labelling policy advice within the New Zealand government structure (s6.3.5).

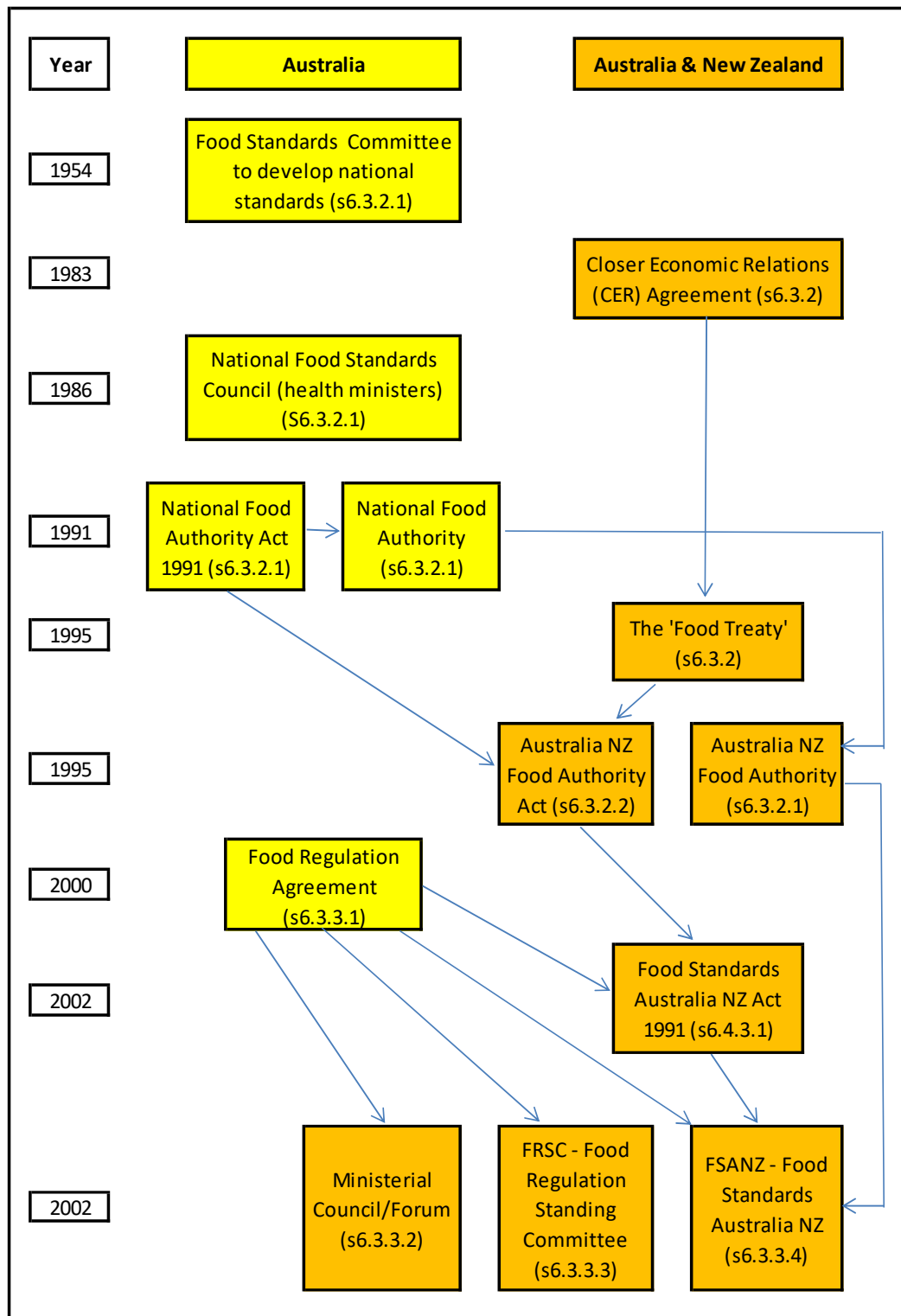
The evolution of joint food standards in Australia and New Zealand from 1954 to 2002 is outlined in Figure 6.1. As the sections that follow describe, and some of the arrows in Figure 6.1 indicate, the joint arrangements in place by 2002 were very much the result of New Zealand joining an existing – and still evolving – Australian system for regulating food standards. The implications of these developments for the institutional arrangements underpinning the Review are discussed in Chapter 8 (s8.3.5.3).

### **6.3.2 The political context: Closer Economic Relations**

Trade relations for both Australia and New Zealand were closer with the UK than with each other until the 1960s when the UK joined the European Economic Community.<sup>293</sup> One outcome of reduced trade with the UK was the signing of the New Zealand Australia Free Trade Agreement (NAFTA) in 1965, followed 1983 with the signing of the Australia New Zealand Closer Economic Relationship Free Trade Agreement (ANZCERTA or CER Agreement).<sup>293</sup>

The CER Agreement has been very effective in promoting trans-Tasman trade,<sup>294</sup> and was at one time described by the World Trade Organization as "the world's most comprehensive, effective and mutually compatible free trade agreement".<sup>295</sup> James

**Figure 6.1 Timeline of the evolution of joint food standards in Australia and New Zealand**



(2003) argued that, 20 years after signing, the Agreement had moved from just being about free trade to becoming concerned with economic integration.<sup>296</sup> Developments have included mutual recognition (of, for example, product standards and registration of occupations), a joint government agency to develop food standards (Food Standards Australia New Zealand), and regulatory alignment (for example, business law harmonisation).<sup>295</sup> A joint system with Australia for the development of food standards was one of the first fruits of the move towards economic integration.

Most food standards in New Zealand are shared with Australia as a result of the *Agreement between the Government of Australia and the Government of New Zealand concerning a joint food standards system*.<sup>297</sup> This is referred to in New Zealand and Australian law as the “Australia-New Zealand Joint Food Standards Agreement”,<sup>298, 299</sup> and is commonly referred to as the “Food Treaty”.<sup>300</sup> The Food Treaty was signed in 1995 and updated in 2001.<sup>301</sup>

#### *6.3.2.1 The development of food standards within Australia before the Food Treaty*

The Food Treaty acknowledged that the joint food standards system would be based on an extension of the existing Australian system to include New Zealand. This system had evolved in response to demands within Australia for a joint system shared by the states and territories.<sup>302</sup> An early step was taken in 1954 when the Commonwealth Government established a Food Standards Committee to develop standards suitable for adoption by all states. A National Food Standards Council comprising health ministers from each state and the Commonwealth was established in 1986.<sup>302</sup> Making Food Standards primarily a matter primarily for health ministers was a significant step that is discussed in Chapter 8 (s8.3.5.3). This was followed in 1991 when the Commonwealth, with the agreement of all states and territories, passed the *National Food Authority Act*. This Act established a new body, the National Food Authority.<sup>302</sup>

New Zealand, through the Food Treaty, effectively become a party to an existing Australian system. By 2002 the *National Food Authority Act* had evolved first, in 1995, into the *Australia New Zealand Food Authority Act 1991*,<sup>303</sup> and then (in 2002) into the

*Food Standards Australia New Zealand Act 1991*,<sup>304</sup> both of which remained as Australian legislation. Over the same period the National Food Authority became first the Australia New Zealand Food Authority, and then Food Standards Australia New Zealand (FSANZ).<sup>299</sup>

#### *6.3.2.2 The scope and impact of the Food Treaty*

The Food Treaty was an agreement about the development and maintenance of joint food standards, including those relating to food safety, composition and labelling.<sup>297</sup> Subject to some narrow provisions, both Australia and New Zealand are obliged under the Treaty to adopt as law, without amendments, food standards developed through an agreed process (Article 5).

The Food Treaty, as well as significantly increasing the trans-Tasman trade in food products, has enabled New Zealand, a small country with limited scientific, technical and financial resources, to benefit from the larger Australian pool of expertise in developing food standards.<sup>296</sup>

### **6.3.3 Current arrangements relating to joint food standards as at December 2018**

The Australia-dominated system for managing food standards has continued to develop since the Food Treaty was signed, taking New Zealand with it.

#### *6.3.3.1 The Australian Food Regulation Agreement*

The Food Regulation Agreement (FRA), made between the Commonwealth and Australian states and territories, was first signed in 2000. It has been updated twice, in 2002 and 2008. While New Zealand was never a party, the FRA nevertheless provides for the role agreed for New Zealand under the Food Treaty.<sup>305</sup>

The FRA's first objective was "providing safe food controls for the purpose of protecting public health and safety. Second was "reducing the regulatory burden on the food sector". Seventh, and last, was "supporting the joint Australia and New Zealand efforts



to harmonise food standards”.<sup>305</sup> While reducing the ‘regulatory burden’ on the food industry featured strongly there was no reference to FoPL.

The current food regulatory system to which New Zealand is a party under the Food Treaty was established under the FRA. The three main components of this system are a ministerial forum that sets policy (by 2018 called the Australia and New Zealand Forum on Food Regulation), a group of senior officials who advise the Forum (the Food Regulation Standing Committee), and an agency for developing joint food standards (Food Standards Australia New Zealand).

#### *6.3.3.2 The Australia and New Zealand Ministerial Forum on Food Regulation*

The FRA established the Australia and New Zealand Food Regulation Ministerial Council. The 2008 update of the Agreement set out the membership of the Council. Each Australian state or territory and the Commonwealth and New Zealand governments were to be represented by one or more members, being the Minister for Health for the jurisdiction and other Ministers nominated by jurisdictions “with prime responsibility for matters with which this agreement is concerned”.<sup>305 p4</sup> The Council was to be chaired by a Minister with responsibility for the Commonwealth Health portfolio and supported by a Secretariat provided by the chairing Minister’s portfolio.<sup>305</sup>

In September 2011 the Council of Australian Governments (COAG) replaced the Ministerial Council with the Legislative and Governance Forum on Food Regulation.<sup>306</sup> With a further name change the body became the Australia and New Zealand Forum on Food Regulation (the Forum) in 2014.<sup>307</sup>

The Ministerial Council/Forum was responsible for establishing the Review of Food Labelling Law and Policy in 2009, and continued as a central player throughout the Review and in subsequent developments (s6.4). Membership of the Forum favours Australia very heavily with the result that to a large extent food regulation policy for New Zealand is made in Australia-made. The adoption by New Zealand of the Australian-designed Health Star Rating system is reported in Chapter 7 and discussed in Chapter 8

as a prime example as to how institutional arrangements have had a dominating bearing on FoPL policy in New Zealand (s8.3.5.4).

#### *6.3.3.3 The Food Regulation Standing Committee (FRSC)*

The Food Regulation Standing Committee (FRSC) was also established under the Food Regulation Agreement as a sub-committee of the Ministerial Council, and continues as a sub-committee of the Forum. Members are senior officials of Departments for which the Ministers represented on the Forum have portfolio responsibility. FRSC is responsible for coordinating policy advice to the Forum, and for ensuring a consistent approach to the implementation and enforcement of food standards.<sup>308</sup>

#### *6.3.3.4 Food Standards Australia New Zealand (FSANZ)*

Food Standards Australia New Zealand (FSANZ) is a joint agency established under the Australian FSANZ Act 1991. While the Forum and FRSC are concerned with food regulatory policy, the role of FSANZ is to develop or review food regulatory measures including standards and codes of practice. It had no formal role in the Review.

### **6.3.4 Regulatory arrangements and front-of-pack nutrition labelling (FoPL)**

Food Standards Australia New Zealand (FSANZ) has statutory responsibility for the development of mandatory food standards, including food labelling, with these standards generally applying in both Australia and New Zealand.<sup>299</sup> Because food labelling falls within the ambit of the Food Treaty (s6.3.2.2) it would be difficult for New Zealand to independently develop a mandatory FoPL scheme.

FSANZ follows processes set out in the FSANZ Act 1991. It also needs to comply with the Best Practice Regulation guidelines issued by the Council of Australian Governments (COAG).<sup>309</sup> The COAG guidelines note that all Australian governments had committed to “reviewing annually existing regulations with a view to encouraging competition and efficiency, streamlining the regulatory environment, and reducing the regulatory burden on business arising from the stock of regulation”.<sup>310</sup> This emphasis by COAG on reducing

the regulatory burden would become important if there were a move to make the Health Star Rating system mandatory.

New Zealand's National-led Government's approach to regulation, set out in 2009 was overtly more pro-business than that of COAG. The Statement on Regulation issued in 2009, aimed to 'unshackle' the New Zealand economy by offering a better policy environment for business than could be found in other countries. It required that there to be "a particularly strong case made for any regulatory proposals that are likely to ... impose additional costs on business ... or impair private property rights, market competition, or the incentives on businesses to innovate and invest".<sup>5</sup> The extent to which New Zealand's institutional bias in favour of reducing the regulatory burden influenced the outcomes of the Review is discussed in Chapter 8 (s8.3.5.4).

#### **6.3.5 Institutional arrangements relating to food standards in New Zealand**

New Zealand officials responsible for health aspects of food standards have, since 2002, moved from being located in the Ministry of Health to, by 2012, the Ministry for Primary Industries (MPI), an agency focusing on economic development. This is highly relevant for considering food regulation institutional bias in New Zealand.

Prior to 2002 New Zealand had two regimes relating to food standards. The Ministry of Health administered the Food Act covering food sold on the domestic market, while the Ministry of Agriculture and Forestry (MAF) administered other food related legislation, mainly related to primary production and exports. On 1 July 2002, under a Labour-led government, the New Zealand Food Safety Authority (NZFSA) was created as a semi-autonomous body within MAF by merging the two regimes.<sup>311</sup> In 2007, still under a Labour-led government, NZFSA became a stand-alone government agency with protecting and promoting health and safety the first responsibility listed.<sup>312</sup> Then, under a National-led (conservative) government, NZFSA was merged with MAF from 1 July 2010, with the MAF name retained.<sup>313</sup> MAF's 2011 Statement of Intent made no mention of public health, but a reference to healthier food choices was retained in its strategic framework.<sup>314</sup>

In 2012, still under a National-led government, the Ministry of Fisheries merged with MAF to become the Ministry for Primary Industries (MPI). This completed the journey to 2018 for the former NZFSA.<sup>315</sup>

There were two references to human health in MPI's outcomes framework as described in 2012. The first was under the long-term outcome "protect from biological risk", where the key deliverable is to "Provide effective responses to new foodborne threats to human health through targeted interventions and consumer awareness".<sup>316 p24</sup> The second, under "improve sector productivity", was the key deliverable to develop "a food regime ... that supports innovation and the growth of higher value processed foods and food derived products, including foods that improve health".<sup>316 p18</sup> Production of foods that improved health thus seems to be seen as a by-product of producing higher value processed foods rather than a means of improving population health.

The reference to promoting health that survived the 2010 amalgamation of NZFSA into MAF is absent. Gone too is any reference to the use of food labelling to assist consumers to make healthier food choices. The expression "safe and suitable food" survived, but its only mention is the contribution it makes to New Zealand's reputation as part of maximising export opportunities.<sup>316</sup>

The evidence of this shift away from a health focus among agencies responsible for food regulation in New Zealand, based on government documents, was strengthened by comments from a key informant familiar with the history just described. The informant told the author the focus for MPI was on innovation and growth for the food sector, with nutrition no longer part of the strategy and with nutrition policy sitting within the Ministry of Health. The implications of this for Review outcomes are discussed in Chapter 8 (s8.3.5.4). This includes the extent to which the health voice on food regulation policy might have been affected by whether a Labour-led or National-led government was responsible for the changes in administrative arrangements described above.

### **6.3.6 Conclusion**

If the Review of Food Labelling Law and Policy had been conducted in the late 1990s then the Ministry of Health would have been the agency responsible for leading the development of New Zealand's input. In 2010, when the Review Panel was developing its recommendations, the lead agency for New Zealand was part of the Ministry of Agriculture and Forestry (MAF). By 2012, when key decisions were being made about the outcomes of the Review, the lead agency was the Ministry for Primary Industries (MPI). Both MAF and (particularly) MPI had economic development as their primary focus.

## ***6.4 The origins and establishment of the Review***

Front-of-pack nutrition labelling (FoPL) received significant attention in Australia and New Zealand from 2006 through to the commencement of the Review in 2009. This section outlines developments relating to FoPL during this period within the Ministerial Council and in the health and food industry sectors. In particular, it highlights the start of a crucial battleground between health and food industry groups that continued throughout the Review: whether a FoPL scheme should be "interpretive". It thus addresses Research Question 2 (influences shaping FoPL decisions).

### **6.4.1 Work initiated by the Ministerial Council up to 2009**

Front-of-pack nutrition labelling was first raised in the context of the joint Australian and New Zealand food standards system in 2006.<sup>317</sup> The Ministerial Council, at its October meeting that year, asked the Food Regulation Standing Committee (FRSC) to "explore and report to the Council ... whether a uniform front-of-pack labelling system would be an effective health strategy, and to advise on the efficacy of a range of options for such a labelling system, which may include the traffic light labelling system".<sup>202</sup>

The 2007/08 Front-of-Pack Working Group was established by FRSC in January 2007, and consisted of officials from the Commonwealth, Australian states and territories, and

New Zealand. In March 2007 it sought relevant information from “key industry, consumer and public health bodies”.<sup>318 p1</sup>

The Working Group defined front-of-pack labelling as the provision of nutritional information to consumers on the front of packaged foods.<sup>319 p6</sup> It went on to distinguish between non-interpretive and interpretive labelling. Non-interpretive labelling essentially repeats selected information on the front of packaging from the Nutrition Information Panel on the back, leaving it to consumers to assess how healthy the food is from this information. Interpretive labelling, on the other hand, indicates ‘at a glance’ the healthiness of a food, or the extent to which it should fit within a healthy diet.<sup>319</sup> Interpretive labelling was one of the key issues dividing the food industry from public health during and following the Review (s8.2.2).

In addition to establishing the Working Group, FRSC requested advice from the Australian Population Health Development Principal Committee (APHDPC), a subcommittee of the Australian Health Ministers' Advisory Council composed of officials. This advice was supportive of interpretive labelling.<sup>319</sup>

Following feedback from FRSC the Ministerial Council endorsed a “Front of Pack Labelling Policy Statement” in October 2009.<sup>320</sup> The statement stressed the importance of “a preventive population based approach to promoting health” that involved “changing the environment to make healthier choices easier choices and addressing the needs of diverse population groups”. A FoPL scheme, according to the statement, should enable direct comparison between individual foods that may contribute to the risk factors of chronic diseases, increase awareness of the contribution of individual foods positively or negatively to these risk factors, and be readily understandable across diverse groups including those with low literacy or numeracy skills.<sup>320</sup> While the statement did not use the name, the scheme called for fitted the Working Group’s description of an interpretive system.

The membership of the Ministerial Council when it made key decisions relating to the Review and its outcomes is relevant to the discussion of ideological power in Chapter 8

(s8.3.4). When the Council endorsed the October 2009 statement, as Table 6.3 shows, it could be described as generally ‘left-leaning’. For eight of the ten jurisdictions the Lead Minister was from the Labor Party in Australia or Labour Party in New Zealand (s3.10.2).

**Table 6.3 Ministerial Council membership in May and October 2009**

<b>Jurisdiction</b>	<b>Lead Minister portfolio</b>	<b>Party</b>	<b>Left-leaning</b>	<b>Right-leaning</b>
Commonwealth	Health & Ageing	Labor	1	0
New Zealand	Food Safety	National	0	1
New South Wales	Primary Industries	Labor	1	0
Victoria	Health	Labor	1	0
Queensland	Health	Labor	1	0
Tasmania	Health	Labor	1	0
South Australia	Health	Labor	1	0
Western Australia	Health	Liberal	0	1
ACT	Health	Labor	1	0
Northern Territory	Health	Labor	1	0
			<b>8</b>	<b>2</b>

#### **6.4.2 Health sector views and initiatives relating to FoPL up to 2009**

By the launch of the Review in November 2009, public health organisations in both Australia and New Zealand strongly supported the introduction of an interpretive FoPL scheme.

##### *6.4.2.1 Australia*

In February 2009 a group of Australian health, nutrition and consumer organisations met in Sydney to develop an agreed position on front-of-pack labelling. The attendees referred to themselves collectively as “public health organisations”.<sup>321 p2</sup> All attendees agreed to a consensus position that defined the goals of any FoPL scheme as to “promote an increase in the number of people eating in accordance with dietary guidelines” and to “complement and support other strategies designed to address the

increasing prevalence of obesity, poor nutrition and chronic disease”.<sup>321 p4</sup> To achieve these goals, attendees agreed that a FoPL scheme needed to be mandatory, consistent across products, and uniformly applied throughout Australia. It should include nutrient information as well as an interpretive element.<sup>321</sup>

Two key informants told the author that most of the attending organisations supported a traffic light system as the preferred FoPL option, but this was left out of the agreed position in order to obtain consensus. This close cooperation and consensus building among Australian public health and consumer organisations is later discussed in terms of network power (s8.3.3).

#### *6.4.2.2 New Zealand*

An early indication of New Zealand health sector views on FoPL comes from submissions made in 2006 to the New Zealand Parliament’s Health Select Committee Inquiry into Obesity and Type 2 Diabetes. Food labelling was not in the Inquiry’s Terms of Reference. Nevertheless 54 of 312 submissions, including 31 of the 141 from the health sector, were coded as supporting the proposition that “a simple labelling system that distinguishes more healthy from less healthy food is required”.<sup>7 p63</sup> A number of these directly stated that the required system needed to be mandatory.

Sixteen of the 31 health sector submissions specifically called for introduction of an interpretive traffic light system. A number also directly stated that the required system needed to be mandatory. The only two industry submissions that mentioned a traffic light system (both from beverage companies) were opposed to traffic light labelling.<sup>7</sup>

#### **6.4.3 Food industry views and initiatives relating to FoPL up to 2009**

The non-interpretative Daily Intake Guide (DIG) food labelling scheme was launched by the Australian Food and Grocery Council (AFGC) in November 2006,<sup>199</sup> with the New Zealand Food and Grocery Council (NZFGC) in support.<sup>213</sup> These are the peak organisations for large food manufacturers in each country.



An indication of food industry thinking relating to FoPL can be gleaned from submissions made in 2006 to New Zealand's Health Select Committee Inquiry into Obesity and Type 2 Diabetes. Eight submissions, all but one from industry, submitted that individual foods were not in themselves unhealthy, implying there was no basis for distinguishing more healthy from less healthy foods, a requirement of an 'interpretive' system. The New Zealand Food and Grocery Council, for example, proposed that there is "no such thing as a food that is good or bad for health; it is the overall diet that affects health".<sup>7</sup>

#### **6.4.4 The drivers for establishment of the Review of Food Labelling Law and Policy**

The Review had two primary drivers: regulatory reform, and the push to use front-of-pack nutrition labelling (FoPL) as a tool to improve population health. A tension between these was a marked feature of the Review and its aftermath. The way in which this played out is crucial when the influences of the food industry and public health advocates on Review outcomes is considered in the Discussion (s8.3).

##### *6.4.4.1 The regulatory reform origin*

The most direct origin of the Review was a push from the Coalition of Australian Governments (COAG) to reduce the 'regulatory burden' on industry. In 2008 COAG agreed that the Food Regulation Ministerial Council undertake a comprehensive review of food labelling law and policy.<sup>322 p6</sup> This initiative came from the COAG Business Regulation and Competition Working Group that was driving "an active regulatory reform agenda"<sup>323</sup> influenced by a Competition and Efficiency Commission report from Victoria on the 'regulatory burdens' faced by the Australian food industry.<sup>317</sup> The Australian Food and Grocery Council (AFGC) welcomed the Review as a critical element of COAG's "business regulatory reform agenda".<sup>324</sup>

##### *6.4.4.2 The health promotion influence on the shape of the Review*

While the direct call for the Review came from COAG and reflected food industry interests, there is evidence that the original purpose was to some extent hijacked to

address health promotion concerns. Some of this evidence comes from the composition of the Review Panel (s6.4.5.2) and the Panel’s conclusions (s6.6).

#### 6.4.5 Establishment of the Review of Food Labelling Law and Policy

The Ministerial Council agreed, in October 2008, “to commission an independent, comprehensive review of food labelling law and policy”.<sup>325</sup> Terms of Reference were drafted by working group of officials that included New Zealand representation.<sup>326</sup> They were agreed by the Council in May 2009,<sup>327</sup> and released following the Council’s meeting in October 2009.<sup>328</sup> At the same time the Council announced that Dr Neal Blewett, a former Australian Health Minister, would chair the panel to undertake the Review.<sup>328</sup>

At the time of commissioning a review in 2008 the Ministerial Council was strongly left-leaning, with the Lead Minister from nine of the ten jurisdictions representing a labor/labour party (Table 6.4). The membership was similar in 2009 when the Terms of Reference were agreed and Dr Blewett was appointed, with eight left-leaning Lead Ministers (Table 6.3).

**Table 6.4 Ministerial Council membership from in October 2008**

Jurisdiction	Lead Minister portfolio	Party	Left-leaning	Right-leaning
Commonwealth	Health & Ageing	Labor	1	0
New Zealand	Food Safety	Labour	1	0
New South Wales	Primary Industries	Labor	1	0
Victoria	Health	Labor	1	0
Queensland	Health	Labor	1	0
Tasmania	Health	Labor	1	0
South Australia	Health	Labor	1	0
Western Australia	Health	Liberal	0	1
ACT	Health	Labor	1	0
Northern Territory	Health	Labor	1	0
			<u>9</u>	<u>1</u>

#### 6.4.5.1 *Terms of Reference*

The Terms of Reference began by noting that the Review was to use ‘an evidence based approach’, and that the Ministerial Council had agreed that it would be ‘independent’.<sup>329</sup>

The tension between reducing the ‘regulatory burden’ on industry and health promotion, evident throughout the Review, was reflected in the Preamble. On one hand:

Through COAG, all Australian governments have committed to regulatory reform to create a seamless national economy, reduce the regulatory burden without compromising public health and safety and maintain or increase the competitiveness of Australian businesses.<sup>329</sup>

On the other:

As part of its prevention stream of work in the health policy arena COAG has also agreed to tackle the burden of chronic disease, which raises issues of relevance to the food regulatory system.<sup>329</sup>

The Ministerial Council was well aware of tensions between stakeholders. They noted in 2009 that, in relation to food labelling, consumer and public health stakeholders usually sought mandatory labelling requirements, while industry generally sought standards that permitted voluntary labelling for aspects such as product claims.<sup>329</sup>

The Review Panel was required by the Ministerial Council to:

1. Examine the policy drivers impacting on demands for food labelling.
2. Consider what should be the role for government in the regulation of food labelling. What principles should guide decisions about government regulatory intervention?
3. Consider what policies and mechanisms are needed to ensure that government plays its optimum role.
4. Consider principles and approaches to achieve compliance with labelling requirements, and appropriate and consistent enforcement.

5. Evaluate current policies, standards and laws relevant to food labelling and existing work on health claims and front of pack labelling against terms of reference 1-4 above.
6. Make recommendations to improve food labelling law and policy.<sup>329</sup>

While the Terms of Reference acknowledged the tension in trying to reduce both industry regulation and chronic disease, the text gave no lead as to how this might be resolved. The Terms of Reference listed above do not suggest the Ministerial Council was directing the Panel to make reducing the ‘regulatory burden’ on industry the main focus of the Review, as claimed by a New Zealand Government agency.<sup>323</sup>

#### 6.4.5.2 *The Review Panel*

A working group of officials was responsible for co-ordinating the selection of panel members. All jurisdictions represented on the Ministerial Council were consulted on the appointments.<sup>323</sup> Dr Blewett assisted in the selection process.<sup>326</sup>

The Panel comprised Dr Blewett and four other members. These were “public law expert Dr Chris Reynolds, economic and consumer behaviour expert Professor Simone Pettigrew, food and nutrition policy academic Associate Professor Heather Yeatman, and food industry communications, marketing and corporate affairs professional Nick Goddard”.<sup>322</sup> p6 At first glance this might look like a balanced spread of expertise representing a range of stakeholders. However, both Yeatman and Pettigrew could also have been described as bringing a public health perspective. In 2013 Yeatman was President of the Australian Public Health Association,<sup>330</sup> while Pettigrew’s research focus was in health promotion, and she was an Associate Editor of *BMC Public Health*.<sup>331</sup> Given this and the fact that the Chair was a former Labor Minister of Health who as Minister had “worked for a greater emphasis in national health policies on the prevention of diseases”,<sup>332</sup> the Panel might have been expected to give greater attention to health rather than food industry concerns. As discussed below (s8.3.4.4) this is not the Panel one would have expected if the primary driver was reducing regulation to help the food industry.

#### **6.4.6 The New Zealand Government's position relating to the Review**

The Review was initiated by a COAG decision as described above, but affected New Zealand through its joint arrangements with Australia regarding food standards. According to a draft cabinet paper, New Zealand was involved in the Ministerial Council working group that prepared the terms of reference, but did not contribute to funding the Review since it was a COAG initiative.<sup>333</sup> When asked, at the Wellington public meeting held in March 2010, why there was no New Zealander on the Panel, Dr Blewett's reply was "Ask your government".\* At the time this was the National-led Key Government.

The New Zealand Government and its lead agency on food standards appeared to have little interest in any role for the Review in improving public health. The primary driver for the Review identified in the Terms of Reference, according to NZFSA, was 'to reduce the regulatory burden of food labelling requirements on industry, while maintaining public health and safety'.<sup>323</sup> This appears to be a misrepresentation of the document. The Preamble for the Terms of Reference referred to both reducing the 'regulatory burden' and tackling the burden of chronic disease. No priority was clearly stated, nor implied in the specific terms listed (s6.4.5.1).

In advising their minister in 2010, NZFSA officials emphasised that a focus on reducing the 'regulatory burden' was consistent with New Zealand government policy. They went on to advise that New Zealand "should be cautious about mandating food labelling requirements on the assumption that they will promote healthy eating. Such interventions can be costly for food producers, and may not be effective in influencing consumer behaviour".<sup>323</sup> New Zealand officials, then, maintained the food regulation institutional bias favouring the food industry already noted above.

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\* From notes taken at the meeting by the author.

## **6.5 Consultation by the Review Panel**

Consultation by the Review Panel had four main phases: first-round submissions, publication of an *Issues Consultation Paper*,<sup>11</sup> public meetings conducted by the Panel, and second-round submissions focusing on responses to the *Issues Consultation Paper*. The consultation process uncovered the issues between the food industry and public health with respect to front-of-pack nutrition labelling (FoPL) that were to play a dominant role in shaping the Review and its outcomes.

### **6.5.1 First-round submissions**

The Review Panel began its consultation process when, in October 2009, it invited stakeholders to make written submissions on food labelling issues within the scope of the Terms of Reference. Little information is available about the more than 6000 submissions received, other than that they included 52 from food and related industries (four from New Zealand), 48 from NGOs (seven from New Zealand) and 16 from government agencies and health services (one from New Zealand).<sup>292 pp165-7</sup>

The tension between public health concerns and reducing the ‘regulatory burden’ on industry was evident in submissions. In reporting on key issues raised the Panel first mentioned “key drivers of food labelling”, and then listed “health promotion and preventative health objectives” first among these drivers.<sup>292 p167</sup> The Panel noted the view of many stakeholders that “the protection and promotion of public health and safety should take priority over any other food labelling drivers or objectives”, and that public health should be seen as promoting good health rather than just preventing food-related illness.<sup>292 p167</sup> The Panel thus appears to have seen health promotion as more important than reducing the regulatory burden on industry from early in the Review process.

The Panel did not make first-round submissions public, but several were available from the websites of their authors, including that from the Australian Food and Grocery Council (AFGC). The AFGC strongly supported the Review. It began its submission by pointing out in detail the importance of the food manufacturing sector to the Australian

economy, presumably in an attempt to draw attention to its ‘investment power’ (Chapter 4). Its first recommendation was that the Review “consider the broader COAG business regulation reform agenda for Australia’s food regulatory system and ensure alignment of the Review findings with COAG’s objectives”.<sup>199 p6</sup>

### **6.5.2 The Issues Consultation Paper**

Initial submissions, together with issues in the literature and media, were used by the Panel to inform the *Issues Consultation Paper*<sup>11</sup> (ISC). This was released by the Panel on 5 March 2010, launching the second stage of public consultation.<sup>292 p.viii</sup>

A hint that the Panel was going to disappoint those wanting the Review to focus narrowly on regulatory reform was provided by the Panel’s interpretation of ‘public health’ in the ISC to include health promotion – “activities designed to inhibit chronic disease by the promotion of healthy eating”.<sup>11 p3</sup> The Panel defended its use of this broader definition of public health by noting its consistency with the strategic direction for the food regulatory system endorsed by the Ministerial Council in May 2008.<sup>11 p3, 334</sup>

The *Issues Consultation Paper* asked 37 questions covering the issues on which the Panel wished to consult. Of particular relevance to this study were:

- Q1. To what extent should the food regulatory system be used to meet broader public health objectives?
- Q4. What principles should guide decisions about government intervention on food labelling?
- Q8. In what ways can food labelling be used to support health promotion initiatives?
- Q25. What is an appropriate role for government in relation to use of pictorial icons on food labels?
- Q27. What objectives should inform decisions relevant to the format of front-of-pack labelling?<sup>11</sup>

New Zealand officials from NZFSA, in advising the Minister for food safety, were not happy with the ISC because it canvassed “opportunities for increasing labelling regulation, when one of the aims of the review is stated to be reducing regulatory burdens for businesses.”<sup>335 p3</sup> NZFSA again identified its position as more sympathetic to industry concerns (reducing, or not increasing, regulation), than to those of public health (providing better nutrition information on labels).

### **6.5.3 Public consultation**

The ISC formed the basis for public consultation forums conducted by the Panel in all Australian capital cities, and in Wellington and Christchurch. More than 550 people attended the forums. The Panel also met with “key stakeholder groups, ministers and representatives from government departments”.<sup>292 p.vii</sup>

The New Zealand consultations were organised by the NZFSA.<sup>336</sup> What were described as “public consultation” meetings were held in Wellington and Christchurch in March 2010. As well, a “Manufacturers and Retailers Forum” was held in Wellington.<sup>337</sup> The NZFSA did not arrange for a forum for public health advocates, a matter that is discussed further in relation to the institutional bias favouring the food industry evident in New Zealand (s8.3.5.4).

### **6.5.4 Second-round submissions**

The Panel received almost 600 submissions by the closing date for the second-round (14 May 2010).<sup>292 p.vii</sup> These submissions are central in answering part of Research Question 1 (stakeholder positions on FoPL considered as part of the Review).

Quantitative content analyses of the submissions are reported next. These provide information on stakeholder positions (Study 1) and on ‘framing’ of issues by the food industry (Study 2).

NZFSA also did some analysis of 38 submissions identified as from New Zealand stakeholders. These included 18 from “public health professional and advocacy groups”, 12 from “industry groups and businesses”, and four from “consumer advocacy groups”.



NZFSA summarised the positions taken in these submissions. For public health groups they noted strong support for interpretive (traffic light) front of pack labelling. Industry groups, however, generally considered that current food standards regarding nutrition information on food labels should not be changed and that regulation should be minimal. Consumer groups strongly supported mandatory traffic light labelling.<sup>326 pp3-4</sup>

### **6.5.5 Study 1: Some stakeholder positions in second-round submissions**

#### *6.5.5.1 Introduction*

The biggest issue dividing the food industry and public health in second-round submissions was whether a traffic light front-of-pack nutrition labelling (FoPL) system should be introduced. Study 1 reports evidence about the views of stakeholders on this issue, showing a very strong preference from public health advocates for traffic lights, and equally strong opposition from some segments of the food industry. It thus provides evidence directly relevant to Research Question 1 (stakeholder positions on FoPL).

Some preliminary results relating to food industry and health sector positions on labelling issues in second-round submissions were obtained from a pilot study. Those relating to traffic light labelling and the food industry's Daily Intake Guide (DIG system) were reported in an editorial in the New Zealand Medical Journal (White, Thomson and Signal, 2010<sup>1</sup>). Results relating to health claims were reported in a letter to the same journal (White and Thomson, 2011<sup>338</sup>). Producing these results was largely incidental to the process of developing methods and establishing issues for the content analyses reported here. The health claims findings are outside the scope of this study in that they are not part of what is generally understood by front-of-pack nutrition labelling (FoPL). In the case of the editorial, Study 1 repeated analysis of health sector, food industry and government views on traffic light labelling in more rigorous fashion, making the pilot results redundant.

The pilot study found that 16 of 26 submissions (62%) from food manufacturers supported DIG, while one food manufacturer opposed it. Half the 46 health sector

submissions were opposed to DIG, with none supporting it. No further work was done relating to DIG in Study 1.

A central finding of the pilot study was that the introduction of a traffic light nutrition labelling system (TLS) was the most contentious issue in the Review between the health sector and the food industry (in particular food manufacturers). This issue provides the focus for Study 1.

The first step in Study 1 was the assigning of submissions to sectors and sub-sectors, and the identification of those submissions that referred to a TLS (s6.5.5.2). This was followed by analysis, by sector and sub-sector, of support for Proposition 1 – that some form of TLS should be introduced (s6.5.5.3), and Proposition 2 – that some form of TLS would be a good approach to front-of-pack nutrition labelling (s6.5.5.4). Submitters agreeing with Proposition 2 were categorised as TLS supporters while those disagreeing were categorised as TLS opponents (6.5.5.5). Reference is then made to a study published in the Australian and New Zealand Journal of Public Health (White and Signal, 2012)<sup>2</sup> that drew on the Study 1 analysis to report on evidence cited by supporters and opponents in support of their positions on Proposition 2 (s6.5.5.6).

Results are not reported by country. This information was not recorded on the Panel website, and it was not always possible to clearly identify country from submitters' names or the content of submissions.

#### *6.5.5.2 The submissions by sector and sub-sector*

Inter-coder reliability was high for coding of sector and sub-sector (Krippendorff's alpha = .95). An alpha of .80 or more is considered as acceptable in most situations, and one exceeding .90 as nearly always acceptable.<sup>36</sup> The coders made different decisions for only three of the 100 submissions used in assessing inter-coder reliability.

Table 6.5 shows all 451 submissions by sector and sub-sector. The food industry made the most submissions of any sector (84), followed by health (65), government (15), consumer groups (four) and the advertising industry (four). The remaining 279

submissions were coded as 'other'. The great majority of these were from individuals for whom a 'sector' could not be distinguished. Only submissions from the six sectors in Table 6.5 are relevant for answering Research Question 1.

**Table 6.5 Submissions by sector and sub-sector, and by reference to a traffic light system**

Sector	Referred to a traffic light system		Did not refer to a traffic light system		Total	
	n	%	n	%	n	%
<b>Health</b>						
Nutrition-related disease	6	55%	5	45%	11	100%
Alcohol control			15	100%	15	100%
Nutrition	7	70%	3	30%	10	100%
Academic	7	70%	3	30%	10	100%
Other	11	58%	8	42%	19	100%
<b>Total health sector</b>	<b>31</b>	<b>48%</b>	<b>34</b>	<b>52%</b>	<b>65</b>	<b>100%</b>
<b>Food industry</b>						
Primary production	3	7%	38	93%	41	100%
Manufacture	19	59%	13	41%	32	100%
Retail	4	50%	4	50%	8	100%
Other	2	67%	1	33%	3	100%
<b>Total food industry sector</b>	<b>28</b>	<b>33%</b>	<b>56</b>	<b>67%</b>	<b>84</b>	<b>100%</b>
<b>Government</b>						
Central	1	25%	3	75%	4	100%
State/Territory	4	57%	3	43%	7	100%
Local	1	25%	3	75%	4	100%
<b>Total government sector</b>	<b>6</b>	<b>40%</b>	<b>9</b>	<b>60%</b>	<b>15</b>	<b>100%</b>
<b>Consumer groups</b>	<b>3</b>	<b>75%</b>	<b>1</b>	<b>25%</b>	<b>4</b>	<b>100%</b>
<b>Advertising industry</b>	<b>1</b>	<b>25%</b>	<b>3</b>	<b>75%</b>	<b>4</b>	<b>100%</b>
<b>Other</b>	<b>42</b>	<b>15%</b>	<b>237</b>	<b>85%</b>	<b>279</b>	<b>100%</b>
<b>Grand Total</b>	<b>111</b>	<b>25%</b>	<b>340</b>	<b>75%</b>	<b>451</b>	<b>100%</b>

Reference to a TLS in submissions was highest for consumer groups (75%), followed by health (40%), government (40%) and the food industry (33%).

Because no alcohol control submissions referred to a TLS, these were treated as part of the 'other' category rather than the health sector in the remainder of Study 1.

#### *6.5.5.3 Views on the introduction of a traffic light system (Proposition 1)*

Inter-coder reliability was high (Krippendorff's  $\alpha = 0.91$ ) for coding submissions containing Proposition 1 ('Some form of TLS should be introduced'). Stability over time was also high for the investigator's coding, with 93% of the submissions assigned the same code for Proposition 1 in the pilot study.

Forty-two of the 111 submissions that referred to a TLS were coded as agreeing with Proposition 1, and 29 as disagreeing (Table 6.6). The remaining 40 submissions neither agreed nor disagreed. Eighteen of the 42 submissions agreeing with Proposition 1 (43%) were from the health sector. This was 28% of all health sector submissions. Submissions from governments and consumer groups also showed some support. No health or government submission expressed disagreement with Proposition 1.

Disagreement with Proposition 1 came very much from one source: 24 of the 29 submissions disagreeing (83%) were from the food industry. Food manufacturers and retailers expressed most of the disagreement. The AFGC (the peak organisation for these groups) made a case in its submission that sums up their concerns:

For providing general information about food which is applicable across the healthy adult population AFGC considers non-interpretative approaches – such as the DIG scheme - are better than interpretive approaches such as “traffic lights”. This reflects the nutritional wisdom that all foods can be incorporated into healthy diets and the maxim of moderation, balance and variety – and importantly underscores that all foods do contribute to diets.<sup>339 p31</sup>

**Table 6.6 Percentage of submissions referring to a traffic light system that agreed or disagreed with Proposition 1, by sector and sub-sector**

Sector Sub-sector	Agreed		Disagreed		Neither		Total	
	n	%	n	%	n	%	n	%
<b>Health</b>								
Nutrition-related disease	4	67%			2	33%	6	100%
Nutrition	4	57%			3	43%	7	100%
Academic	4	57%			3	43%	7	100%
Other	6	55%			5	45%	11	100%
<b>Total health sector</b>	<b>18</b>	<b>58%</b>			<b>13</b>	<b>42%</b>	<b>31</b>	<b>100%</b>
<b>Food industry</b>								
Primary production	1	33%	1	33%	1	33%	3	100%
Manufacture			18	95%	1	5%	19	100%
Retail			4	100%			4	100%
Other			1	50%	1	50%	2	100%
<b>Total food industry sector</b>	<b>1</b>	<b>4%</b>	<b>24</b>	<b>86%</b>	<b>3</b>	<b>11%</b>	<b>28</b>	<b>100%</b>
<b>Government</b>								
Central					1	100%	1	100%
State/Territory	2	50%			2	50%	4	100%
Local	1	100%					1	100%
<b>Total government sector</b>	<b>3</b>	<b>50%</b>			<b>3</b>	<b>50%</b>	<b>6</b>	<b>100%</b>
<b>Consumer groups</b>	<b>2</b>	<b>67%</b>			<b>1</b>	<b>33%</b>	<b>3</b>	<b>100%</b>
<b>Advertising industry</b>			<b>1</b>	<b>100%</b>			<b>1</b>	<b>100%</b>
<b>Other</b>	<b>18</b>	<b>43%</b>	<b>4</b>	<b>10%</b>	<b>20</b>	<b>48%</b>	<b>42</b>	<b>100%</b>
<b>Grand Total</b>	<b>42</b>	<b>38%</b>	<b>29</b>	<b>26%</b>	<b>40</b>	<b>36%</b>	<b>111</b>	<b>100%</b>

#### 6.5.5.4 Views on whether a traffic light system is a good approach (Proposition 2)

Sixty-two submissions were coded as agreeing with Proposition 2 ('Some form of TLS would be a good approach to front-of-pack nutrition labelling'), with 33 coded as

disagreeing (Table 6.7). Of these, 26 were from the health sector (40% of all health sector submissions). The 33 disagreeing included 29 that were directly coded, among these being the submission from the Australian Food and Grocery Council (AFGC). Four submissions that expressed full support for the AFGC submission were coded as disagreeing on this basis. The remaining 16 submissions referring to a TLS expressed no position. Inter-coder reliability was high (Krippendorff's  $\alpha = 0.97$ ), as was stability between the investigator's coding for Proposition 2 here and in the pilot study (94% agreement).

The same 24 food industry submissions opposed to Proposition 1 were opposed to Proposition 2. However eight health submissions expressing no view on Proposition 1 agreed with Proposition 2. Four of seven submissions from Australian States or Territories, and three of four from consumer groups, also agreed. No submissions from the health, government or consumer sectors were coded as disagreeing.

#### *6.5.5.5 Supporters and opponents of traffic light labelling*

Supporters are defined as those agreeing, and opponents as those disagreeing, with Proposition 2. As is clear from Table 6.7, supporters were predominantly from the health sector, while most opponents were from the food industry. Some of the more prominent supporters and opponents are shown in Figure 6.2.

Table 6.7 shows 62 supporters and 33 (not 29) opponents of traffic light labelling. Four of the 33 opponents did not directly refer to traffic light labelling in their submissions, but instead stated they fully supported the submission from the Australian Food and Grocery Council (AFGC) which opposed traffic light labelling. These four submissions therefore had nothing to say directly about evidence related to traffic light labelling used in submissions.

**Table 6.7 Percentage of submissions referring to a traffic light system that agreed or disagreed with Proposition 2, by sector and sub-sector**

Sector	Agreed		Disagreed		Neither		Total	
	n	%	n	%	n	%	n	%
<b>Health</b>								
Nutrition-related disease	5	83%			1	17%	6	100%
Nutrition	6	86%			1	14%	7	100%
Academic	7	100%					7	100%
Other	8	73%			3	27%	11	100%
<b>Total health sector</b>	<b>26</b>	<b>84%</b>			<b>5</b>	<b>16%</b>	<b>31</b>	<b>100%</b>
<b>Food industry</b>								
Primary production	1	33%	1	33%	1	33%	3	100%
Manufacture			18	95%	1	5%	19	100%
Retail			4	100%	0		4	100%
Other			1	50%	1	50%	2	100%
<b>Total food industry sector</b>	<b>1</b>	<b>4%</b>	<b>24</b>	<b>86%</b>	<b>27</b>	<b>96%</b>	<b>28</b>	<b>186%</b>
<b>Government</b>								
Central					1	100%	1	100%
State/Territory	4	100%					4	100%
Local	1	100%					1	100%
<b>Total government sector</b>	<b>5</b>	<b>83%</b>			<b>1</b>	<b>17%</b>	<b>6</b>	<b>100%</b>
<b>Consumer groups</b>	<b>3</b>	<b>100%</b>					<b>3</b>	<b>100%</b>
<b>Advertising industry</b>			<b>1</b>	<b>100%</b>			<b>1</b>	<b>100%</b>
<b>Other</b>	<b>27</b>	<b>64%</b>	<b>8</b>	<b>19%</b>	<b>7</b>	<b>17%</b>	<b>42</b>	<b>100%</b>
<b>Grand Total</b>	<b>62</b>	<b>56%</b>	<b>33</b>	<b>30%</b>	<b>16</b>	<b>14%</b>	<b>111</b>	<b>100%</b>

**Figure 6.2 Some prominent supporters and opponents of traffic light labelling in second-round submissions to the Review**

<b>Supporters</b>	<b>Opponents</b>
Australian Medical Association	Australian Food and Grocery Council
Public Health Association of Australia	New Zealand Food and Grocery Council
Royal Australasian College of Physicians	Australian National Retailers Association
Canterbury District Health Board	New Zealand Retailers Association
Auckland Regional Public Health Service	Australian Beverages Council Ltd
Cancer Council Australia	Sugar Australia Pty Ltd
Cancer Society of New Zealand	Dairy Australia
Choice (Australian Consumers Organisation)	Nestlé Australia
Consumer New Zealand	Kraft Foods Ltd
Obesity Policy Coalition	George Weston Foods Ltd
South Australian Government	Mars NZ
New South Wales Government	Sanitarium Health Food Company
Department of Health, Western Australia	Foodstuffs (NZ) Ltd
Dr Rosemary Stanton OAM	
Dr Trevor Beard	
Profs K O’Dea, M Daube and L Baur	

#### *6.5.5.6 Evidence cited by supporters and opponents of traffic light labelling*

Research evidence cited by the 62 supporters and 29 opponents of traffic light labelling was published in the Australian and New Zealand Journal of Public Health (White and Signal, (2012)<sup>2</sup>. As summarised in the paper’s abstract:

Supporters focused on studies showing traffic light labels were better than other systems at helping consumers identify healthier food options. Opponents cited evidence that traffic light labels were no better than other systems in this respect and noted a lack of evidence that they led to changes in food consumption. A literature review demonstrated that, as a group, submitters had drawn attention to most of the relevant research evidence on traffic light labelling. Both supporters and opponents were, however, selective in their use of evidence... The weight of



evidence suggested that traffic light labelling has strengths in helping consumers to identify healthier food options.<sup>2 p446</sup>

Supporters generally made a more evidence-based case than did opponents. There were 80 citations to 21 documents in submissions from the 62 supporters, compared to 15 citations to six documents in submissions from the 29 opponents. The mean number of citations per supporter (1.29) was significantly higher than the 0.52 citations per opponent ( $\chi^2(1, n=95)=6.65, p=.01$ ). As well, supporters were significantly more likely than opponents to cite peer-reviewed documents. Of the 80 citations by supporters, 64 (80%) were to peer-reviewed documents, compared to 8 of 15 citations (53%) by opponents ( $\chi^2(1, n=95)=4.90, p=.03$ ).

Further results, including details of the documents cited, are available in White and Signal (2012).<sup>2</sup>

An important consideration for Research Question 2 (influences shaping FoPL decisions) is whether research evidence cited in second-round submissions influenced the Panel's conclusions and recommendations. Table 6.8 was compiled by searching the front-of-pack labelling section in *Labelling Logic*<sup>292 pp120-26</sup> for references used by the Review Panel that were included in Table 1 from White and Signal (2012).<sup>2</sup> White and Signal had conducted a systematic search for all published research relating to the advantages and disadvantages of traffic light labelling cited in second-round submissions.

It is clear from Table 6.8 that there was a great deal of commonality between references used by the Panel and by traffic light supporters. Seven documents were referred to by both the Panel and supporters, with 44 citations to these seven documents in the submissions. On the other hand there was only one common citation between the Review Panel and traffic light opponents. Both the Panel and traffic light supporters, then, found the same documents useful in making their cases. The Review Panel thus mounted the case for its FoPL recommendations using a similar evidence base to that used in public health and other submissions that supported traffic light labelling.

**Table 6.8 Documents relating to traffic light labelling referred to in both *Labelling Logic* and second-round submissions to the Review**

Document	<i>Labelling Logic</i>	<i>Number of citations in submissions</i>	
	citation number	Traffic light Supporters	Traffic light opponents
Kelly et al (2009) <sup>340</sup>	223	19	1
Gorton et al (2009) <sup>341</sup>	230	9	0
Malam et al (2009) <sup>342</sup>	210	8	0
Borgmeier and Westenhoefer (2009) <sup>343</sup>	230	3	0
Lobstein and Davies (2009) <sup>192</sup>	211	3	0
Louie et al (2008) <sup>344</sup>	230	1	0
Beard et al (2007) <sup>345</sup>	234	1	0
Total citations:		44	1

Panel member Heather Yeatman, a key informant, provided information about how the Panel viewed the research evidence, telling the author that “there was evidence becoming available about which types of system people ... were able to understand and interpret in terms of their choice behaviour ... [and that the Panel] felt that the evidence was strongest in relation to a multiple traffic light system”.

#### *6.5.5.7 Summary of key results from Study 1*

Sixty-two submissions were coded as agreeing that a traffic light system (TLS) should be introduced, with 33 disagreeing. Those agreeing were categorised as traffic light supporters, and those disagreeing as traffic light opponents. Of the 31 health sector submissions referring to a TLS, 26 (84%) were from traffic light supporters and none

were opponents. Of the 28 food industry submissions referring to a TLS, on the other hand, 24 (86%) were from opponents, while one (a primary producer) was from a supporter.

Traffic light supporters were significantly more likely to cite evidence for their position than were opponents. The evidence they cited as was also significantly more likely to come from a peer-reviewed document.

## **6.5.6 Study 2: Some business practices in second-round submissions**

### *6.5.6.1 Introduction*

A large number of business practices adopted by industries with products under threat because of health concerns were identified in Chapter 5. This study, a second quantitative content analysis, looked for evidence of the use of some of these in second-round submissions to the Review. The findings of Study 2 are considered in the Discussion (s8.3.1) with respect to Research Question 2 (influences – in this case business practices – shaping FoPL decisions).

Seven practices identified in Chapter 5 were selected on the basis that evidence of their use might be found in submissions and that a reasonably small number of search terms to find them could be identified. Two were ways in which industries have attempted to reduce the likelihood of statutory regulation – promoting self-regulation (s6.5.6.2 below) and diverting attention (s6.5.6.3). Four were common ways in which industries with products under threat have framed issues relating to public health: stressing personal responsibility (s6.5.6.4), emphasising freedom of choice (s6.5.6.5), referring to the ‘nanny state’ (s6.5.6.6) and describing opponents in ways that might undermine their credibility (s6.5.6.7). A fifth way of framing issues, but specific to the food industry, was to claim there are no ‘bad’ foods (s6.5.6.8).

Two points need to be noted about the way results are presented in this study. First, in reporting some results, alcohol control submissions were not included as part of the health sector because they were not concerned with front-of-pack nutrition labelling

(FoPL). Second, the way in which submissions have been grouped across sectors and sub-sectors differs according to the issue being considered. Generally, results are reported for a small set of sectors or sub-sectors (the health sector and food manufacturers, for example), with all of the remaining submissions reported as a single group.

#### *6.5.6.2 Promoting self-regulation*

Of the 451 submissions available on the Review website as at 3 January 2011, 38 (8%) were coded as supporting self-regulation of front-of-pack nutrition labelling (FoPL), and 90 (20%) as opposing (Table 6.9). Half of the supporters were food manufacturers. Of the 32 manufacturers who made submissions, 19 (59%) supported self-regulation. Of interest in relation to the influence of institutional arrangements on Review outcomes is that all four advertisers were supporters, as were three of eight (38%) food retailers.

Opposition to self-regulation of FoPL was strongest in the health and consumer sectors. Of the 65 health submissions, 30 (46%) were opposed, as were three of the four consumer submissions. There was also significant opposition from ‘other’ submissions, with 16% of 279 submissions opposed to self-regulation. The three opposing government submissions were from the South Australian Government,<sup>346</sup> the Northern Territory Department of Health and Families<sup>347</sup> and the West Australian Department of Health.<sup>348</sup> No submission from either the health or consumer sectors supported self-regulation of FoPL.

The results in Table 6.9 illustrate that the food industry was not monolithic with respect to FoPL. While in general food manufacturers supported self-regulation, two manufacturers – an Australian-based pie manufacturer<sup>349</sup> and the Sanitarium Health Food Company<sup>350</sup> – were opposed. Also opposed were six of 41 primary producers (15%), with only one primary producer – Dairy Australia<sup>351</sup> – a supporter. This is of relevance to Research Question 3 (lessons for public health) and is discussed in Chapter 8 (s8.4.8).

**Table 6.9 Submissions to the Review supporting and opposing self-regulation of FoPL**

<b>Sector</b>	<b>Supported</b>		<b>Opposed</b>		<b>Neither</b>		<b>Total</b>	
Sub-sector	n	%	n	%	n	%	n	%
<b>Health</b>								
Nutrition-related disease			8	73%	3	27%	11	100%
Nutrition			6	60%	4	40%	10	100%
Academic			7	70%	3	30%	10	100%
Alcohol control					15	100%	15	100%
Other health sector			9	47%	10	53%	19	100%
<b>Total health sector</b>			<b>30</b>	<b>46%</b>	<b>35</b>	<b>54%</b>	<b>65</b>	<b>100%</b>
<b>Food industry</b>								
Primary production	1	2%	6	15%	34	83%	41	100%
Manufacture	19	59%	2	6%	11	34%	32	100%
Retail	3	38%			5	63%	8	100%
Other food industry	1	33%			2	67%	3	100%
<b>Total food industry sector</b>	<b>24</b>	<b>29%</b>	<b>8</b>	<b>10%</b>	<b>52</b>	<b>62%</b>	<b>84</b>	<b>100%</b>
<b>Government</b>								
Central	2	50%			2	50%	4	100%
State/Territory	1	14%	3	43%	3	43%	7	100%
Local					4	100%	4	100%
<b>Total government sector</b>	<b>3</b>	<b>20%</b>	<b>3</b>	<b>20%</b>	<b>9</b>	<b>60%</b>	<b>15</b>	<b>100%</b>
<b>Consumer groups</b>		<b>0%</b>	<b>3</b>	<b>75%</b>	<b>1</b>	<b>25%</b>	<b>4</b>	<b>100%</b>
<b>Advertising industry</b>	<b>4</b>	<b>100%</b>					<b>4</b>	<b>100%</b>
<b>Other</b>	<b>7</b>	<b>3%</b>	<b>46</b>	<b>16%</b>	<b>226</b>	<b>81%</b>	<b>279</b>	<b>100%</b>
<b>Grand Total</b>	<b>38</b>	<b>8%</b>	<b>90</b>	<b>20%</b>	<b>323</b>	<b>72%</b>	<b>451</b>	<b>100%</b>

It is noted that a number of references to self-regulation in submissions would probably have been prompted by the Review's Issues Consultation Paper.<sup>11</sup> This included, for example, Question 35 which asked:

If a move to either: self regulation by industry of labelling requirements; or co-regulation involving industry, government and consumers were to be considered, how would such an arrangement work and what issues would need to be addressed?<sup>11</sup>

Any submissions concerned with alcohol control would not have been picked up by the search terms, which were concerned with regulation in relation to front-of-pack nutrition labelling.

#### *6.5.6.3 Diverting attention to physical activity*

Diverting attention was identified in Chapter 5 as a practice adopted by businesses with products under threat from public health. In the case of the food industry, one manifestation is diverting attention to physical activity.

As Table 6.10 shows, 24 of the 451 submissions to the Review referred to physical activity in relation to health. Of the 24, eight were from the health sector, eight from food manufacturers and eight from all other submitters. Food manufacturers were the most likely to raise physical activity in their submissions, with 25% doing so. This compared to 16% of health sector submissions (excluding those focusing just on alcohol control for whom physical activity was not an issue), and 3% of all other submissions. Of note was that while eight of 32 food manufacturers mentioned physical activity, none of the 52 submissions from elsewhere in the food industry did so.

The tendency of food manufacturers to refer to physical activity in relation to health in submissions shows up particularly strongly when a comparison is made with all other submissions. While 25% of food manufacturers made this reference, only 4% of all other submissions did so.

A feature of submissions from food manufacturers was the proportion that mentioned physical activity in conjunction with the word “lifestyle” (16%) compared to that in all other submissions (1%). Five of the 11 submitters who did this were food manufacturers. The Australian Beverages Council, for example, strongly believed “in providing fact-

based information on all product labels, supported by effective consumer messaging and education programs, to help to empower people to select balanced and sensible diets combined with an active lifestyle”.<sup>352 p2</sup> Coca-Cola wanted to provide “truthful scientifically substantiated advice on how a particular product consumed in the context of a balanced diet and active lifestyle can also support health promotion initiatives”.<sup>353</sup>

Two of the remaining six submissions in which physical activity and “lifestyle” were linked had industry sympathies. Neoliberal think tank the Institute of Public Affairs proposed that people became obese as a result of a broad mix of factors, “including lifestyle choices, the environment and their level of physical activity, as well as their diet”.<sup>354 p3</sup> The industry-funded New Zealand Nutrition Foundation noted that its mission was to “enhance the quality of life of New Zealanders by encouraging informed, healthy and enjoyable food choices as part of an active lifestyle”.<sup>355 p1, 356</sup>

Two of the three submissions referring to programmes to improve health that included both physical activity and nutrition components were from food manufacturers. Nestlé Australia referred to their own “Health & Activity Resource”.<sup>357 p11</sup> The Confectionery Sector of the Australian Industry Group mentioned its “Be treatwise” programme, together with a supporting website “where consumers can find more information about the role of confectionery in the diet, energy requirements for various age groups and exercise needs”.<sup>358 p6</sup> The third submission, that from the NSW Department of Premier and Cabinet, referred to government-funded programmes addressing both physical activity and nutrition.<sup>359</sup>

**Table 6.10 References in submissions to physical activity in relation to health**

Reference Sector / sub-sector	Referred to		Not referred to		Total	
	n	%	n	%	n	%
<b>Referred to physical activity in relation to health (selected sectors)</b>						
Health (excluding alcohol control)	8	16%	42	84%	50	100%
Food manufacturers	8	25%	24	75%	32	100%
Other food industry			52	100%	52	100%
All other submissions	8	3%	309	97%	317	100%
	<b>24</b>		<b>427</b>		<b>451</b>	
<b>Referred to physical activity in relation to health (food manufacturers compared to all others)</b>						
Food manufacturers	8	25%	24	75%	32	100%
All other submissions	16	4%	403	96%	419	100%
	<b>24</b>		<b>427</b>		<b>451</b>	
<b>Referred to physical activity in conjunction with "lifestyle"</b>						
Food manufacturers	5	16%	27	84%	32	100%
All others	6	1%	413	99%	419	100%
	<b>11</b>		<b>440</b>		<b>451</b>	
<b>Referred to programmes aimed at improving health that included both physical activity and nutrition components</b>						
Health (excluding alcohol control)			50	100%	50	100%
Food manufacturers	2	6%	30	94%	32	100%
All other submissions	1	0.3%	368	100%	369	100%
	<b>3</b>		<b>448</b>		<b>451</b>	

#### 6.5.6.4 Stressing personal responsibility for making healthy food choices

Only 11 of the 451 submissions to the Review mentioned responsibility in relation to healthy food choices. Five submissions indicated support for the position that individuals were responsible for healthy food choices without mentioning any associated responsibility for the food industry (Table 6.11), three of which were food manufacturers. One of these, Flavour South Australia, put the case as follows:

Food labelling is about basic information sharing. It is difficult for food manufacturers to take on social responsibility over individual health promotions. It



is still incumbent on individuals to use the information given to make an informed choice instead of punishing food manufacturers whose products should be eaten in moderation.<sup>360 pp2-3</sup>

One of the two submissions from outside the food industry, the Institute of Public Affairs (IPA), described itself as “a think tank committed to smaller government”. The IPA was concerned food labelling regulations did not “place unnecessary burdens on enterprise, encourage consumers to obfuscate responsibility for their own behaviour and unnecessarily empower government to make decisions on behalf of individuals”.<sup>354 p2</sup>

**Table 6.11 Responsibility for healthy food choices**

Position Sector / sub-sector	Support indicated		Support not indicated		Total	
	n	%	n	%	n	%
<b>Individuals are responsible for making healthy food choices, with no mention of any associated responsibility for the food industry</b>						
Health (excluding alcohol control)			50	100%	50	100%
Food manufacturers	3	9%	29	91%	32	100%
Other food industry			52	100%	52	100%
All other submissions	2	1%	315	99%	317	100%
	<b>5</b>		<b>446</b>		<b>451</b>	
<b>Individuals are responsible for making healthy food choices, but the food industry has associated responsibility</b>						
Health (excluding alcohol control)	2	4%	48	96%	50	100%
Food manufacturers	1	3%	31	97%	32	100%
Other food industry			52	100%	52	100%
All other submissions	2	1%	315	99%	317	100%
	<b>5</b>		<b>446</b>		<b>451</b>	
<b>Individuals cannot be held responsible for making healthy food choices</b>						
All submissions	1	0.2%	450	99.8%	451	100%

While statements from the two submissions just quoted focus strongly on individual choice, neither went so far as to state that the food industry had no role in relation to healthy food choices made by individuals. None of the 451 submissions in fact did so.

Another set of five submissions indicated support for the position that while individuals were responsible for making healthy food choices, the food industry had an associated responsibility. One of these was from food manufacturer Coca-Cola South Pacific. Coca-Cola proposed that consumers should be provided with “key product and nutritional information in the most effective way”, and that individuals should be “empowered to take responsibility for their health”.<sup>353</sup> Q4 Another, from the Obesity Policy Coalition (OPC), submitted as follows:

While it is certainly important that people exercise personal responsibility ... we know from other areas, such as road safety and tobacco, that the impact of these strategies will be limited unless they are accompanied by policy and regulatory measures to create an environment that supports healthy choices<sup>361</sup> p2

#### *6.5.6.5 Emphasising freedom of choice in food selection*

Thirteen submissions, none of which were from the health or food industry sectors, included arguments relating to freedom of choice for consumers in selecting food. Eleven of these argued that freedom of choice for food purchasers was dependent on the provision of adequate information on labels, such as whether the product was GM-free.

In describing the context for the Review, the Panel noted in the Issues Consultation Paper that food labelling “raises questions of freedom of choice and the right to know”.<sup>11</sup> p1 This wording was reflected back in a number of submissions, and may have prompted reference to freedom of choice in some submissions where it would not otherwise have been made. But even this invitation to raise issues relating to freedom of choice did not prompt any health or food industry submitters to do so.

#### *6.5.6.6 Referring to the 'nanny state'*

Only two references to the 'nanny state' were found among the 451 submissions. Fight the Obesity Epidemic (FOE), a New Zealand NGO, predicted that food manufacturers would attempt to paint interpretive labelling as another example of the 'nanny state' when it was in fact "an issue of consumer rights: the right to know what's going into our bodies and those of our children, and the effect this has on health".<sup>362 p5</sup> The second reference, made in an 'other' submission,<sup>363</sup> concerned health-related information on alcohol labelling.

#### *6.5.6.7 Describing opponents in ways that might undermine their credibility*

Ten submissions were located in which other parties involved in food labelling were described in ways that might undermine their credibility. Only one of these was a food industry submission. Mrs Mac's Pty Ltd, a food manufacturer, wrote of "extremist positions that are unrealistic and unworkable"<sup>349 Q5</sup> and "extreme lobby groups"<sup>349 Q13</sup> without identifying any party being referred to. There is a suggestion elsewhere in the submission that the reference was to advocates of stronger regulation of country of origin labelling.<sup>349</sup>

Another submission, from the Winemakers Federation of Australia, referred to "anti-alcohol activists" and "many academics and activists who make their living from the alcohol debate".<sup>364 p22</sup>

#### *6.5.6.8 Claiming there are no bad foods*

Two submissions, one each from a food manufacturer and a food retailer, indicated support for Position 1 in Table 6.12 – that no foods are 'good' or 'bad'. A further five submissions, four from food manufacturers and one from a retailer, indicated support for Position 2 – that FoPL should not depict food as good or bad. There were no submissions in which claims were made that no foods were healthy, unhealthy, healthier or less healthy, or that FoPL should not depict foods as such. Four submissions, all from food manufacturers, indicated support for Position 3 – that all foods have a place in a healthy or balanced diet.

In all, ten food manufacturers and two food retailers indicated support for at least one of Positions 1 to 3. No other submitter did so.

**Table 6.12 Indications of support in submissions for positions relating to whether there are ‘good’ and ‘bad’ foods**

Position Sector / sub-sector	Support indicated		Support not indicated		Total	
	n	%	n	%	n	%
<b>Position 1: No foods are good or bad</b>						
Food manufacturers	1	3%	31	97%	32	100%
Food retailers	1	13%	7	88%	8	100%
All other submissions			411	100%	411	100%
	<b>2</b>		<b>449</b>		<b>451</b>	
<b>Position 2: FoPL should not depict foods as good or bad</b>						
Food manufacturers	4	13%	28	88%	32	100%
Food retailers	1	13%	7	88%	8	100%
All other submissions			411	100%	411	100%
	<b>5</b>		<b>446</b>		<b>451</b>	
<b>Position 3: All foods have a place in a healthy or balanced diet</b>						
Food manufacturers	4	13%	28	88%	32	100%
All other submissions			419	100%	419	100%
	<b>4</b>		<b>447</b>		<b>451</b>	
<b>Indicated support for any of Positions 1, 2 or 3</b>						
Food manufacturers	10	31%	22	69%	32	100%
Food retailers	2	25%	6	75%	8	100%
All other submissions			411	100%	411	100%
	<b>12</b>		<b>439</b>		<b>451</b>	

#### 6.5.6.9 Summary of key results for Study 2

There was strong support for self-regulation of FoPL from the food industry, particularly from manufacturers. There was also some opposition, particularly from primary

producers. Opposition was strong from the health and consumer sectors, with no submissions supporting self-regulation.

References to physical activity in relation to health were of interest as this was identified as a business tactic used to divert attention from public health concerns about food. Here a clear pattern emerged: eight of 32 food manufacturers (25%) made such a reference in their submission, but none of the 52 submitters from other sub-sectors of the food industry did so.

The submissions were examined for ways in which industry was known to frame issues when in conflict with public health. Evidence was found for use of the ‘personal responsibility’ frame, and the claim that, although there may be bad diets, there are no bad foods. No evidence was found for use of the ‘freedom of choice’ or ‘nanny state’ frames in industry submissions. Nor was there evidence of the food industry describing opponents in ways that might undermine their credibility. The overall impression is that in general that the food industry in their submissions were moderate in their language compared with some of the more extreme examples of framing described in Chapter 5.

## **6.6 The Review Panel’s report: January 2011**

### **6.6.1 Labelling Logic: the Panel’s report**

On 28 January 2011 the Review Panel presented its report: *Labelling Logic: Review of Food Labelling Law and Policy (2011)*<sup>292</sup> to the then Ministerial Council. The report was publicly released on the same day.<sup>322 p6</sup>

Front-of-pack nutrition labelling (FoPL) was a major focus in *Labelling Logic*. In the words of Dr Neal Blewett (the Panel’s chair), “the major thrust of the report is a heightened emphasis on food labelling as a preventative weapon in fighting diet-related disease”.<sup>365</sup>

Three of the Panel’s 61 recommendations are of direct relevance to this study: Recommendations 1 (that public health be defined broadly as including health promotion), 50 (that an interpretive FoPL system be developed), and 51 (that this be a

multiple traffic light system). These recommendations had a major impact on Review outcomes that are central to answering Research Question 2 (influences shaping FoPL decisions). The details of these recommendations as expressed in *Labelling Logic* are outlined in sections 6.6.1.1 to 6.6.1.4 below.

#### *6.6.1.1 Policy drivers of food labelling*

The Terms of Reference for the Review required the Panel to examine the policy drivers impacting on demands for food labelling.<sup>329</sup> The Panel's response to this provides an insight into the thinking behind their recommendations. Three drivers for food labelling policy were identified by the Panel: consumers, the food industry, and governments. For the Panel, the "crux of the Review was to address the tensions between these policy drivers and to seek to resolve them".<sup>292 p32</sup> The descriptions of these policy drivers in *Labelling Logic* are not covered here since they are only indirectly related to the research questions and issues they raised are covered elsewhere.

#### *6.6.1.2 A framework for deriving principles for regulatory intervention*

The Panel proposed a framework for deriving principles for food labelling interventions by government based on a consideration of the policy drivers it had identified. The framework included a four-tier, issues-based food labelling hierarchy. Food safety sat at the top, followed by preventative health, new technologies, and consumer values issues. Food safety posed the highest risk to health, and consumer values issues the lowest. The dominant mode of intervention ranged from mandatory requirements for food safety through to co- and self-regulation for consumer values issues.<sup>292 pp40-5</sup>

#### *6.6.1.3 Food labelling, regulation and public health*

'Preventative health', as it was labelled by the Panel, is the tier of particular interest for this study. The Panel noted a consensus among all the major stakeholders that prescriptive regulation was required for the food safety tier in the food labelling hierarchy.<sup>292 p46</sup> The extent to which mandatory regulation should apply to preventative health, however, was seen as more complex. While there was consensus that consumers should be provided with at least basic information to facilitate healthy choices such as

ingredients and nutrient levels, there was debate about issues such as mandating information on labels to help consumers interpret information about nutrients. In one of the key paragraphs in its Report the Panel went on to say:

An added complexity in the area of preventative health is that the principles of best regulatory practice are unlikely to provide clear justification for mandatory labelling with reference to chronic diseases. In essence, this is because the benefits flowing from regulation depend on changed consumer behaviour. Such change will likely remain uncertain, particularly given the multitude of factors that influence consumer behaviour and the inevitable time lag between the imposition of a labelling requirement and any effects on the chronic condition. Such uncertainty should not prevent action.<sup>292 pp46-7</sup>

They thus viewed regulatory optimisation as setting too high a bar for implementing necessary action on food labelling, to the detriment of population health.

The Panel returned to this issue in a later section of their report. They noted that public health issues “require multi-strategy approaches to achieve success”. They stated:

The regulatory requirement for evidence of significant health or behavioural impact and economic assessments for individual food standards (i.e., Regulatory Impact Statements) can act as a barrier to utilising the food label as one component of multi-strategy approaches.<sup>292 p61</sup>

The two quotations support the case made in the Discussion that the Panel believed a mandatory FoPL system was needed but did not recommend this directly for political reasons as they saw it as unlikely to be achievable under the institutional arrangements relating to food regulation.

#### *6.6.1.4 Front-of-pack nutrition labelling (FoPL)*

Improvements in public health could be made, in the Panel’s view, by ensuring that food labels clearly communicated the health-related properties of products. Effective front-of-pack nutrition labelling (FoPL) systems, they argued, allowed “products with superior

health benefits to rapidly and efficiently convey this information to consumers”.<sup>292 p120</sup>

This position emerged in the following recommendation:

Recommendation 50: that “an interpretative front-of-pack labelling system be developed that is reflective of a comprehensive Nutrition Policy and agreed public health priorities”.<sup>292 p121</sup>

The Panel defined ‘interpretative’<sup>\*\*</sup> FoPL as follows:

Interpretative guide/front-of-pack label information: front-of-pack elements on the food label can provide consumers with a readily understood signal of the food’s ‘healthiness’ in respect to aspects of the dietary guidelines, particularly key nutrients and energy. Such information/ elements need to be understandable by the majority of the population, in particular low literacy and low numeracy groups.<sup>292 p59</sup>

Interpretive labels are commonly described as allowing consumers to assess the healthiness of a product ‘at a glance’.

The Panel saw the need for a single, consistent, interpretive FoPL system. In their view none of the existing FoPL schemes used in Australia and New Zealand, including the AFGC’s Daily Intake Guide (DIG) scheme or the Heart Foundation Tick, was suitable for this role. Instead, they were impressed by evidence from submissions that a colour-coded, multiple traffic lights system was the best solution.<sup>292 pp120-4</sup> The result was the following recommendation:

Recommendation 51: That a multiple traffic lights front-of-pack labelling system be introduced. Such a system to be voluntary in the first instance, except where general or high level health claims are made or equivalent endorsements/trade names/marks appear on the label, in which case it should be mandatory.<sup>292 p124</sup>

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<sup>\*\*</sup> ‘Interpretative’ and ‘interpretive’ have identical meaning and both are in common usage. The Panel used the former while the author prefers the latter. ‘Interpretive’ is used throughout this thesis except in sections where ‘interpretative’ is used in a quotation.



The reason given in the Panel’s report for mandatory use of traffic lights when other specified information was on the label was to “ensure consumers are receiving balanced information about the product”.<sup>292 p124</sup> Six weeks after the publication of *Labelling Logic*, Panel chair Neal Blewett, in responding to an attack on traffic lights as diminishing personal responsibility, gave an insight into the thinking behind this. The recommendation involved, he wrote, an implied bargain with the food industry. Industry got something it wanted in the Panel’s recommendations – a relaxation on prohibitions on making health claims on labels. In return, when such claims were made, food manufacturers would be required to have traffic lights as “an interpretative guide to key nutrients in the food”.<sup>365</sup>

Key informants suggested that the decision not to recommend that traffic lights be mandatory was a pragmatic one. One Panel member told the author “we wanted to make recommendations that Government was able to accept”, and that a factor in the decision was ensuring that “any regulatory recommendation was not going to be unreasonable under the regulatory reform process”. Another Panel member said they were well aware that any recommendations for regulation would be subject to scrutiny from the Australian Office of Best Practice Regulation. These comments align well with the point made above (s6.6.1.3) that the Panel believed a mandatory FoPL system was needed but did not recommend this directly for political reasons.

#### **6.6.2 Responses to *Labelling Logic* from stakeholders**

Responses to *Labelling Logic* were of two sorts: immediate reactions in the days following its release, and actions undertaken by stakeholders over following months in attempts to influence government responses to the recommendations. Both are relevant for answering part of Research Question 1 (stakeholder positions on FoPL considered as part of the Review). These sections considers in turn responses from three sets of stakeholders, the food industry (s6.6.2.1), health and consumer groups (s6.6.2.2) and governments (s6.6.2.3 to s6.6.2.5).

#### 6.6.2.1 Food industry responses

The Food and Grocery Councils in Australia and New Zealand each issued media statements on the day *Labelling Logic* was released.

The New Zealand Food and Grocery Council (NZFGC) was disappointed that, in its view, the Report did not sufficiently reflect calls in the Terms of Reference for proposals that were evidence-based and did not impose unjustifiable ‘regulatory burdens’ on business.<sup>366</sup> The AFGC welcomed a number of recommendations, but their rejection of Recommendation 51 (introduction of traffic lights) was the main focus of their statement. It argued that traffic light labelling was “badly understood by consumers and the system has been rejected by countries around the world”.<sup>367</sup>

Moves by the AFGC to oppose traffic lights began immediately. Three days after the Report’s release they announced a new campaign to promote their own Daily Intake Guide system,<sup>368</sup> a business practice identified in Chapter 5 (s5.3.3).

In March 2011 the AFGC updated its members on its actions in response to *Labelling Logic*.<sup>369</sup> AFGC, the Update advised, “categorically opposes, and will continue to oppose, traffic light ... labelling in any guise.” An initial response had been circulated to “key Ministers”. A meeting had been held with Catherine King (Parliamentary Secretary for Health and Ageing and Chair of the Ministerial Council) “to clearly articulate industry’s response and concerns with several of the recommendations including the proposed mandatory approach to traffic light ‘front of pack’ food labelling”. Finally, the AFGC said it “was to brief State and Territory political leaders on the issue”.<sup>369</sup>

In July 2011 the AFGC set out, in a position paper, its formal response to the recommendations in *Labelling Logic*. The central issue, for the AFGC, was the failure of the Panel to adhere to what AFGC claimed was their primary mandate: streamlining and reducing regulation.<sup>370</sup> p4 Among the AFGC’s recommendations in the position paper were that the Government not regulate for any FoPL scheme not backed by “strong scientific evidence demonstrating its particular effectiveness over other labelling

approaches”, and that the Commonwealth, States and Territories work in partnership to promote DIG.<sup>370</sup> p8

As they did in their submissions to the Review, in the AFGC used the Preface in their position paper to stress the importance of food manufacturing to the Australian economy. They expanded on the statement made in their second-round submission, and repeated the statement that for Australia’s well-being it was essential “that the magnitude, significance and contribution of this industry [food manufacturing] is recognised and factored into the Government’s economic, industrial and trade policies”.<sup>370</sup> The AFGC was well aware of its investment power and eager to use it.

Later in this chapter (s6.7) the arguments used in responding to *Labelling Logic* by both the AFGC and NZFGC are linked to business practices identified in Chapter 5.

#### 6.6.2.2 *Health and consumer sector responses*

A number of Australian health and consumer groups issued media releases on the day *Labelling Logic* was released that are relevant to Research Question 1 (stakeholder positions on FoPL). Those welcoming the Panel’s FoPL recommendations, and particularly the call for traffic light labelling, included the Australian Medical Association,<sup>371</sup> Cancer Council Australia,<sup>372</sup> Diabetes Australia,<sup>373</sup> the consumer organisation Choice<sup>374</sup> and the Obesity Policy Coalition.<sup>375</sup> There was, however, some disappointment that the Panel had not called for traffic light labelling to be made mandatory from its introduction.<sup>374, 376</sup>

Further support for the report’s FoPL recommendations came in the days following the Report’s release from the Australian Healthcare and Hospitals Association,<sup>377</sup> nutritionist Dr Rosemary Stanton,<sup>378</sup> and Professor Mike Daube. Professor Daube said that, if adopted, the recommendations would make Australia a world leader in food labelling.<sup>379</sup>

The major Australian supporters of the traffic light recommendations in *Labelling Logic* were not acting in isolation from each other. Later in 2011, many of them co-signed a

letter urging governments to ignore industry objections and proceed with introduction of traffic light labelling. Signatories included the Public Health Association of Australia, the Australian Medical Association, Choice, Diabetes Australia, Cancer Council Australia, the Obesity Policy Coalition, the Australian & New Zealand Obesity Society, The World Health Organization Collaborating Centre for Obesity at Deakin University, VicHealth, the George Institute for Global Health, and Dr Rosemary Stanton.<sup>380</sup>

Key informants helped give a fuller picture of health sector responses to the Panel's decision not to recommend that the traffic lights system be mandatory. Three New Zealand informants from organisations that had supported traffic light labelling in their second-round submission (s6.5.4) commented on Recommendation 51. All three agreed that a traffic light system should be introduced, but did not agree that it should be voluntary in the first instance. In the words of one:

Obviously there's a conflict of interest between the food industry (their main goal is to make money) and the public health goal to improve health, so the only things that are going to be labelled if it's voluntary are probably healthy foods.

Some Australian informants from the health sector, on the other hand, believed that it was unrealistic to have expected government support for mandatory traffic lights. Nutritionist Rosemary Stanton told the author she thought Recommendation 51 "was quite a good compromise, because after working in this business for a while you realise there has to be some compromise". She continued, "I thought by introducing it [traffic light labelling] slowly, ... by just starting off on products that have got a health claim, that would have been a good thing".

Jane Martin from Australia's Obesity Policy Coalition (OPC) said that her organisation had always wanted mandatory traffic lights, "but [Panel chair Neal] Blewett understood that it wasn't going to happen". Ms Martin agreed with the author's prompt that it was a "foot in the door". In reply to the author's observation that she seemed generally happy with what *Labelling Logic* said about front-of-pack labelling, Ms Martin replied that "yes, I thought it was amazing". She was also surprised.

OPC remained active in promoting traffic light labelling following the release of *Labelling Logic*. In September 2011 it released research claiming that 87% of Australian grocery buyers favoured “clearer nutrition labels on packaged food in the form of traffic light ratings”. At the same time OPC launched a phone app to show consumers how traffic light labelling would work. OPC also launched an advocacy campaign to make traffic light labelling mandatory on all packaged food products.<sup>381</sup>

Another Australian informant from the health sector, however, believed the Panel should have called for mandatory traffic light labelling. She believed that as a politician Dr Blewett did not want to “alienate large sectors of industry”, and that if this approach had been taken with the tobacco industry, “we’d still be where we were 30 years ago”.

#### *6.6.2.3 Initial government reactions*

This sub-section and the two that follow report information of particular relevance to the discussion in Chapter 8 (s8.3.4) regarding how decisions related to the Review may have been influenced by the ideological stance of governments.

In welcoming the report on behalf of the Federal Government, Parliamentary Secretary for Health and Ageing Catherine King did not comment on specific recommendations. In setting out three principles for her government’s response she did, however, give a guide as to how her government might receive them. First, consumers were entitled to have the best possible information on food labels. Second, this information should help consumers make healthy food choices. Third, her government would “continue to support an innovative, vibrant and sustainable food industry in Australia that actively supports the government’s health agenda.”<sup>382</sup> This response hinted that her government’s response would focus more on health than reducing the ‘regulatory burden’ on the food industry.

A spokesperson for New Zealand’s Food Safety Minister Kate Wilkinson said the Minister would be considering the recommendations, with a response to follow in December 2011.<sup>383</sup>

The formal responses of both the New Zealand and Australian governments to the recommendations in *Labelling Logic*, both dated 30 November 2011, are reported in the next two sections. The New Zealand section also includes mention of some history relevant to the position taken by the New Zealand government.

#### *6.6.2.4 The New Zealand Government response*

The New Zealand Minister of Food Safety had been advised by officials, prior to the Report's release, that some recommendations were "likely to be problematic in terms of existing New Zealand Government policy, especially in relation to regulatory reform".<sup>326 p2</sup> Among those mentioned were the introduction of traffic light labelling, and the broadening of the definition of public health and safety to bring "nutrition and health promotion activities, traditionally the preserve of health policy, to the centre of food safety regulatory policy".<sup>326 p2</sup>

The Economic Growth and Infrastructure Cabinet Committee considered, in April 2011, a paper from the Minister of Food Safety on New Zealand's initial position in response to the recommendations in *Labelling Logic*.<sup>384</sup> In preparing the paper, officials informed the Minister that, in summary, "the New Zealand position is based on the principles of better and less regulation set out in the Government's Statement on Regulation (17 August 2009)". They noted the cabinet paper "was informed by discussions held with industry representatives (principally from the NZFGC, the Retailers' Association, Fonterra, and Sanitarium), along with the Alcohol Advisory Council (ALAC) and the Nutrition Foundation".<sup>385</sup> No mention was made of any discussion with representatives from the health or non-industry-related nutrition sectors.

The April 2011 cabinet paper recommended that New Zealand oppose Recommendation 1 (including a 'broad definition' of 'public health' in the FSANZ Act), and Recommendation 51 (requiring traffic light labelling where a health claim is made for a food). The paper gave an insight into the extent to which the Government's regulatory agenda appeared to trump health considerations by noting:

The Ministry of Health supports the inclusion of a definition of public health on the grounds that public health is already one of the objectives of food standards, and the definition proposed by the Review panel is very similar to the usual definition. However, MAF advises that the inclusion of a definition ... would create the potential for conflict with minimum effective regulation principles.<sup>384 p7</sup>

New Zealand's final position on the *Labelling Logic* recommendations continued the opposition to both Recommendations 1 and 51. Further, New Zealand did not support Recommendation 50 ("That an interpretative front-of-pack labelling system be developed that is reflective of a comprehensive Nutrition Policy and agreed public health priorities"), instead opting to support "ongoing industry efforts to improve the presentation of nutrition information".<sup>386 p6</sup> This was against Ministry of Health advice, which had been to support "a single prescribed, easily understood format for front of pack labelling that could be used voluntarily or be mandated".<sup>384 p11</sup>

Institutional arrangements in New Zealand, then, were heavily stacked in favour of the food industry and against health when it came to food regulation (s8.3.5.4).

#### 6.6.2.5 *The Australian Government response*

The Australian Labor Government, in responding to the recommendations in *Labelling Logic*, generally adopted positions less favourable to the food industry than did New Zealand. In particular, the Australians agreed with Recommendation 1, supporting "a broader definition for 'public health' when defining food standards and the development of a National Nutritional Policy". The Australian Government also indicated that a policy guideline would be developed "to provide clearer direction to FSANZ in relation to the role of food standards in supporting public health objectives".<sup>387</sup>

Recommendation 50 was "agreed in principle" by the Australian Government. They noted "broad support to build upon common ground between industry, public health and consumer stakeholders to develop a Front of Pack Labelling (FoPL) scheme that can support consumer choices about healthier food options".<sup>387</sup>

The Australian Government, however, did not “support traffic light labelling at this time”. They continued:

During consultation with stakeholders, we concluded that there is currently not enough evidence to demonstrate that any of form of front-of-pack labelling, including traffic light labelling and the daily intake guide, provides Australians with the nutritional information they need to make informed choices.<sup>387</sup>

The Government proposed instead that work begin with consumer groups, public health groups and the food industry to develop an effective FoPL system. They signalled the future course for FoPL by noting:

Industry and consumers will be best served by the subsequent development of a single, simple FoPL food guidance system which promotes healthy eating choices, does not create a burden for industry and is easily understood by consumers.<sup>387</sup>

The Commonwealth, they indicated, would support the voluntary implementation by industry of an agreed FoPL system.<sup>387</sup> Chapter 7 relates how this intention was carried out.

The response from the Australian Government just described was much less concerned with business interests and more concerned about public health than that of the New Zealand Government.

## ***6.7 Food industry practices before 9 December 2011***

This section continues the comparison of evidence about food industry business practices relating to the Review against the practices identified in Chapter 5 as attempts by industry to exercise agency power in situations where they are opposed by public health advocates. The evidence of such practices as identified in submissions was reported in Study 2 (s6.5.6). Those practices that occurred prior to the response from ministers to the Panel’s Report on 9 December 2011 are reported here.



### **6.7.1 Direct representations to government (lobbying)**

Lobbying was one of the business practices for which evidence was sought when interviewing key informants. No evidence was found of any food industry lobbying of the Panel outside the formal consultation and submission process. Panel members were asked about consultations with the food industry and health sector, and how these may have differed. One Panel member provided a useful summary. In addition to the public meetings in March 2010, meetings were held around March and April with several specialist groups, generally to “dig a little deeper”. These groups included the AFGC, health officials and (according to another Panel member) public health people.

Dr Geoffrey Annison from the AFGC noted his organisation had attempted to make its case through submissions, and when there was an opportunity to speak with the Panel. These opportunities arose at the public fora and targeted stakeholder meetings. “We were fortunate enough to be invited to one of those. So we did get an opportunity to put our case strongly.” A Panel member confirmed this, noting that the AFGC made its case on these occasions, but otherwise had no input.

Several health sector key informants from both Australia and New Zealand commented on the difficulty in competing with the food industry when it came to lobbying governments because they lacked the resources. This included both time and funding, constraints they saw as not being a problem for the food industry. As Jane Martin from Australia’s Obesity Policy Coalition put it:

We just cannot cover all this stuff. We just don’t have the resources... There’s a myriad of industry people and there’s only a handful of us.

An Australian informant, a member of the Food Regulation Standing Committee, considered the food industry to be well ahead of public health in terms of ability to lobby effectively to governments. The informant described the AFGC as “very fine lobbyists who argue well and plan well, and have access to the most senior levels of government”. The informant continued by making a point discussed later (s8.3.3) linking networking by public health groups to lobbying effectiveness:

I think the public health lobby falls way below the abilities of the AFGC, for example, in being able to exercise influence. It does a good job where in part there are very good and able organisations that can speak well. Often not in a coordinated way, although I think over some of the obesity coalitions that has improved significantly.

#### **6.7.2 Pre-empting opposing initiatives: use of the DIG scheme during the Review**

A common industry practice, when faced with the threat of regulation, has been the introduction or promotion of an alternative but less effective version of what public health advocates were calling on governments to introduce. This was illustrated in Chapter 5 by describing the launching in the UK, US and Australia of very similar non-interpretive front-of-pack labelling schemes when faced with calls for governments to introduce interpretive labelling. The Australian version is the Daily Intake Guide (DIG) system developed by the AFGC. Examples of promotion of the DIG system prior to the decision by governments to develop the Health Star Rating system included:

- In its second-round submission to the Review (March 2010) the AFGC recommended that the Panel note success of DIG “as an example of an effective voluntary code and regulatory measure managed by industry”.<sup>339 p8</sup>
- In June 2010 the AFGC issued a media release hoping “that the Blewett Review will take note of the EU’s ruling on front-of-pack labelling”.<sup>388</sup> This referred to the vote by members of the European Parliament to reject traffic light labelling and endorse Guideline Daily Amounts which were very similar to the DIG system (s5.3.3).
- In January 2011, three days after the release of *Labelling Logic* with its recommended introduction of a TLS, the AFGC launched a DIG “consumer education campaign”, including television advertising, a website and “consumer education material in retail stores and magazines”.<sup>368</sup>
- The AFGC released its formal response to *Labelling Logic* in July 2011.<sup>370</sup> It argued against Recommendation 51 (that a TLS be introduced) on the ground that an effective FoPL system (DIG) existed, and urged governments to work with AFGC to promote DIG.
- In August 2011 the AFGC released the results of a survey into consumer understanding and use of DIG system<sup>389</sup> showing that DIG was “a highly effective tool for families or individuals”.<sup>390</sup>

### **6.7.3 Framing of issues relating to public health**

Seven ways in which industries sometimes framed issues when their products were under attack from public health advocates were outlined in Chapter 5 (s5.4). The use of four of these in second-round submissions was investigated in Study 2 (s6.5.6), where no evidence was found of describing opponents in ways that might undermine their credibility. However, AFGC Chief Executive Kate Carnell provided an example of this practice in a November 2011 opinion piece where she referred to traffic lights as being “advocated by some public health activists”.<sup>391</sup> In fact traffic light labelling was supported in submissions to the Review by, among others, the Australian Medical Association, the Public Health Association of Australia, the Royal Australasian College of Physicians, Cancer Council Australia, Choice (Australian national consumer organisation), Dr Rosemary Stanton OAM, and the South Australian and New South Wales governments (s6.5.5.5).

### **6.7.4 The misuse of policy-relevant science**

As discussed in Chapter 5 (s5.1), no attempt was made to systematically look for examples of the misuse of science relevant to FoPL by business interests over the course of the Review. One example did, however, emerge from monitoring of the AFGC website by the author. In updating its members in March 2011, the AFGC advised as follows:

Comprehensive analysis of the peer-reviewed scientific literature on front of pack labelling has been commissioned to ensure industry’s case supports the Daily Intake Guide over Traffic Light labelling.<sup>369</sup>

This is an extraordinary admission: a literature review was commissioned with its findings, apparently, already determined.

The commissioning of this review provided an insight into the business practice of commissioning friendly publications reported in Table 5.1. Of particular interest was the apparent misrepresentation by the AFGC of the reviewer’s credentials. The AFGC described the commissioned review as “an externally-researched, independent review by leading Australian policy analyst Susannah Tymms”.<sup>392</sup> They reported its results as

confirming “there was ‘no body of scientific evidence’ to suggest traffic light labelling was superior over others forms of front-of-pack labelling, including the Daily Intake Guide (DIG)”.<sup>392</sup>

According to her website, Ms Tymms ran a “boutique consultancy”, established in March 2010, providing “specialist, independent policy research, analysis and advice to government, non-government and private agencies in the agriculture, biotechnology and food sectors”.<sup>393</sup> A “media and publications” page on the website had 11 entries as at 13 December 2018. Four of these related to a period up until 2010 when she was a policy analyst for the Victorian Department of Primary Industries. The seven entries relating to her consultancy work after she left her government position were:

- Her report on front-of-pack labelling commissioned by the AFGC (May 2011)<sup>394</sup>
- A newspaper opinion piece written by the AFGC’s Chief Executive referring to the May 2011 report and describing Ms Tymms as a “leading nutritionist” (22 November 2011)<sup>391</sup>
- An AFGC media release on the May 2011 report and to “leading Australian policy analyst Susannah Tymms” (5 December 2011)<sup>392</sup>
- A report by Ms Tymms on “responsible advertising to children” commissioned by the AFGC (October 2012)
- An AFGC media release referring to the October 2012 report, and referring to Ms Tymms as “a noted researcher specializing in regulatory reform” (2 November 2012)<sup>395</sup>
- A media release referring to the October 2012 report in Food Industry Asia (14 November 2012)
- A media release referring to the October 2012 report and citing comments both by Ms Tymms and the AFGC Chief Executive (27 February 2013).

The purpose here it not to criticise Ms Tymms or the quality of her work in any way, but to point out how the AFGC exaggerated her credentials, presumably to boost the credibility of her review. The AFGC claimed she was independent,<sup>392</sup> a “leading Australian policy analyst”,<sup>392</sup> and a “leading nutritionist”.<sup>391</sup> Her purported independence is questionable, given that her website provides no evidence she had

worked for clients other than the AFGC since becoming a consultant in 2010. Her description as a leading policy analyst is also debatable. The only entry on her website publications page prior to 2012 that appears as though it might contain policy analysis is a 2007 review on the Victorian Department of Primary Industries website concerning a moratorium on genetically modified canola in Victoria. Finally, in 2011 Ms Tymms gave her qualifications as a Bachelor of Arts in English and Psychology, a Graduate Diploma of Applied Science in Horticulture, and a Master of Science in Environmental Science.<sup>396</sup> Nothing further was listed on her website as at 13 December 2018,<sup>393</sup> so it appears Ms Tymms had no qualifications in nutrition. Further, she lists no publications relating to nutrition on her website other than her AFGC-commissioned literature review of FoPL.

Ms Tymms did not find, as the AFGC may have hoped, that the Daily Intake Guide scheme was superior to traffic light labelling. But what she did report fitted well with the AFGC's campaign to prevent the introduction of traffic light labelling. Ms Tymms concluded that further evidence was required before links between FoPL and improved dietary habits could be 'substantiated to the extent that new prescriptive regulatory standards are warranted'.<sup>394</sup>

In Chapter 8 the Tymms study is considered in the light of industry claims to take a more scientific, evidence-based approach than their opponents (s8.3.1.5).

## **6.8 Conclusion**

This chapter traced influences on the Review from the 1980s when institutional arrangements relating to food regulation in both Australia and New Zealand began to be set in place. It continued the story of the origins, establishment and operation of the Review from then until 9 December 2011 when Ministers announced their response to *Labelling Logic*, the Review Panel's report.

The chapter provides evidence relating to all three research questions. In particular it highlights evidence relating to the ongoing tension between reducing the 'regulatory burden' on the food industry and the use of food labels to improve population health,

‘institutional bias’ favouring particular stakeholders as a result of institutional arrangements, and the relationship between the ideological stance of governments and their approaches to decisions relating to the Review.

## Chapter 7

### The Health Star Rating system: an outcome of the Review

#### **7.1 Introduction**

This chapter focusses on the second part of Research Question 1 by reporting how food industry and public health positions on front-of-pack nutrition labelling issues considered as part of the Review of Food Labelling Law and Policy (the Review) were reflected in the eventual front-of-pack nutrition labelling (FoPL) outcome: the Health Star Rating (HSR) system. It also covers Research Question 2 by reporting factors that may have influenced government decisions shaping this outcome. A discussion of the extent to which they might have done so is left until Chapter 8.

The HSR system is an interpretive FoPL scheme, but not a traffic light system (TLS) as recommended by the Review Panel (Chapter 6). Public health and consumer groups had, in their submissions, strongly advocated adoption of a TLS. The food industry in general strongly opposed this, contending that their own, non-interpretive, Daily Intake Guide (DIG) scheme was all that was required. This chapter describes the roles played by health and consumer groups, the food industry and governments in influencing the development and adoption of the HSR system.

The Legislative and Governance Forum on Food Regulation (the Forum), led by the Australian Federal Government and with members from all Australian states and territories together with New Zealand, accepted the recommendation that an interpretive front-of-pack labelling system was required. They did not agree, however, that this interpretive system should be a TLS (s7.2.1). The TLS rejection greatly disappointed public health and consumer groups, but delighted the food industry (s7.2.3).

The Forum decided to develop a new interpretive system using a process involving all stakeholders (s7.3.2). New Zealand opted out of the process and instead started work on its own FoPL system (s7.3.3). In Australia the process resulted in the HSR system announced in June 2013 (s7.3.4). Despite the fears of some, the replacement of the Federal Labor Government by the conservative Abbott government in September 2013 had only a minor effect on the continuing development and implementation of the HSR system (s7.3.5).

New Zealand, after not participating in the HSR development process, decided in June 2014 to join Australia in implementing it (s7.3.6). Governance arrangements for the system are reported next (s7.3.7), followed by progress with implementation in both countries (s7.3.8). Sections then follow reporting on the uptake of the HSR system by industry (s7.3.9), research on the system's effectiveness (s7.3.10) and validity (s7.3.11), consumer awareness and use of the system (s7.3.12), and public support for it (s7.3.13).

Stakeholder views on the HSR from between 2015 and 2018 are then reported (s7.3.14), followed by stakeholder issues with the current HSR system and calls for change (s7.3.15). These issues are likely to be considered in the five year review of the system due in 2019 (s7.3.16).

The chapter concludes by reporting on some contextual factors influencing the Review and its outcomes (s7.4) that had not been reported in earlier sections.

## ***7.2 The response from Ministers to the Panel's report: December 2011***

The formal response from Ministers to *Labelling Logic* (the Review Panel's report) in December 2011 gave substantial attention to the recommendations of interest to this study by endorsing a broader definition of public health as including health promotion (Recommendation 1 in *Labelling Logic*), agreeing on the need for a single interpretive FoPL system (Recommendation 50), but effectively excluding a TLS as a candidate for this system (Recommendation 51). The Ministers' response was pivotal in shaping the



outcomes of the FoPL-related outcomes of the Review and thus central in answering Research Question 2 (influences shaping FoPL decisions).

The membership of the Ministerial Forum when it responded was slightly left-leaning, with six of the ten Lead Ministers from the Australian Labor Party (Table 7.1).

**Table 7.1 Ministerial Forum membership in December 2011**

<b>Jurisdiction</b>	<b>Lead Minister portfolio</b>	<b>Party</b>	<b>Left-leaning</b>	<b>Right-leaning</b>
Commonwealth	Health & Ageing	Labor	1	0
New Zealand	Food Safety	National	0	1
New South Wales	Primary Industries	National	0	1
Victoria	Health	Liberal	0	1
Queensland	Health	Labor	1	0
Tasmania	Health	Labor	1	0
South Australia	Health	Labor	1	0
Western Australia	Health	Liberal	0	1
ACT	Health	Labor	1	0
Northern Territory	Health	Labor	1	0
			<b>6</b>	<b>4</b>

### **7.2.1 The formal response by Ministers**

By late 2011 the Ministerial Council that had initiated the Review had a new name, the Legislative and Governance Forum on Food Regulation (the Forum), but the same membership and role. The Forum released its response to the recommendations in *Labelling Logic* on 9 December 2011.<sup>322</sup>

In its response the Forum aimed to:

- improve our existing food regulatory system by ensuring labelling continues to guarantee food safety as well as help consumers make more informed food choices
- signal that food labels could play an important role in supporting the longer term health of people in Australia and New Zealand

- support our food industry and encourage it to play a greater role in promoting healthy eating, being mindful not to unduly increase the regulatory burden.<sup>322 p5</sup>

The Forum, in other words, was not concerned with reducing the ‘regulatory burden’ on the food industry. Rather it wished to use food labelling to help consumers make more informed choices, and to improve public health. On a key issue – the tension between improving public health and reducing regulation – Ministers thus signalled that they were more on the side of public health.

The Review Panel’s first recommendation, that the FSANZ Act 1991 be amended to include a broad definition of public health that included health promotion and the prevention of illness, was supported by the Forum “in principle”. The Forum indicated that, in the first instance, a Ministerial Policy Guideline would be developed requiring FSANZ to take into consideration both long-term health impacts and immediate health risks when developing food standards.<sup>322</sup>

The Forum supported Recommendation 50, that “an interpretative front-of-pack labelling system be developed that is reflective of a comprehensive Nutrition Policy and agreed public health priorities”.<sup>322 p51</sup> They did not, however, support Recommendation 51 (that a multiple traffic lights front-of-pack labelling system [TLS] be introduced), instead putting this ‘on hold’.<sup>322 p53</sup> The Forum noted that a TLS system was “only one approach to interpretive FoPL, and all other approaches need to be considered”.<sup>322 p54</sup> It proposed a process for seeking agreement on a single, interpretive FoPL scheme with government leading “a collaborative process that brings polarised views together to build on existing common ground”.<sup>322 p52</sup> The Food Regulation Standing Committee (FRSC), a group of officials that advised and supported the Forum, was tasked with managing the process.<sup>397</sup>

The Forum provided a strong incentive for the food industry to participate meaningfully in the collaborative process of developing an interpretive system by indicating that some form of government intervention would follow if the process was unsuccessful. A voluntary scheme would be encouraged if stakeholders could resolve major points of difference. Otherwise a government-led system might be the next step.<sup>322 p53</sup> So industry

was given the carrot of participating in the development of a voluntary interpretive scheme, with the stick of government imposition in the background.

### **7.2.2 The decision by Ministers to put traffic light labelling ‘on hold’**

Three weeks before the Forum was due to meet in December 2013 a briefing provided to New Zealand Minister for Food Safety advised her that the group of officials preparing a draft response for the Forum had spent a lot of time in debating the response to Recommendation 51. The Minister was told all jurisdictions agreed that pursuing a TLS was not feasible, putting Recommendation 51 ‘off the table’.<sup>398</sup>

The rejection of traffic light labelling, particularly given the case that had been made for it by the Review Panel, was interpreted by a number of commentators as a demonstration of the strength of opposition from the processed food industry.<sup>399-401</sup> The extent to which this was an industry win is discussed in Chapter 8 (s8.2.4).

### **7.2.3 Reactions to the response from Ministers**

#### *7.2.3.1 Health and consumer groups*

The reaction from health and consumer groups to the Forum’s December 2011 decisions on FoPL ranged from negative to mixed. The Public Health Association of Australia saw the decision to reject traffic lights as evidence that governments were too close to the food industry.<sup>402</sup> The president of the Australian Medical Association said the federal government had caved into industry pressure.<sup>403</sup> Jane Martin from Australia’s Obesity Policy Coalition, however, focused more on the need to make the system to be developed effective for public health.<sup>404</sup> Australian consumer organisation Choice was pleased that ministers committed to interpretive front-of-pack labelling and effectively rejected the industry’s non-interpretive Daily Intake Guide scheme. but was disappointed that the Forum did not support introducing a TLS.<sup>405</sup> Key informant and nutritionist Dr Rosemary Stanton saw strong food industry influence in the Ministers’ decisions. She told the author that the food industry knew where to go to seek influence,

and could readily convince politicians that what the industry opposed would be bad for jobs.

#### *7.2.3.2 The food industry*

The Food and Grocery Councils in both Australia (AFGC)<sup>392</sup> and New Zealand (NZFGC)<sup>406</sup> welcomed the rejection of traffic lights. No evidence was found of either body commenting on the Forum's support for interpretive labelling.

### **7.3 The outcome: the Health Star Rating system**

#### **7.3.1 Introduction**

The Food Regulation Standing Committee (FRSC) was given the task of developing the proposed new FoPL system through a collaborative process involving industry, public health and consumer stakeholders. This led, in Australia, to the establishment of a development process that resulted in proposals for a voluntary Health Star Rating (HSR) system. (s7.3.2). New Zealand followed a different path, establishing an Advisory Group that produced some principles for interpretive front-of-pack nutrition labelling (s7.3.3). Australian Ministers agreed to introduction of the HSR system at the Ministerial Forum meeting in June 2013 (s7.3.4).

It appears that a star rating system had a head start. On 10 December 2011, the day after the Forum announced the collaborative process, a newspaper noted that Catherine King, the Forum's chair, was "understood to be interested in the star rating system following the release of proposals for such a scheme in the US".<sup>407</sup> This suggests the Australian Project Committee was likely to have had a star rating system high on the agenda from the beginning of its work.

#### **7.3.2 Australian work to develop a new interpretive system**

The FRSC began work on developing a new interpretive system in March 2012 by establishing a Steering Committee to oversee the process. All FRSC members and a representative from the Australian Health Ministers' Advisory Council were on the

Steering Group. A Project Committee was also set up, which in turn commissioned two working groups, one to report on technical design, and the other on implementation, evaluation and education.<sup>408</sup>

#### *7.3.2.1 The Project Committee and working groups*

The task for the Project Committee was to “develop a FoPL system combining both interpretive and informative elements ... that is widespread, simple and interpretive”.<sup>409</sup> The priority focus would be on packaged, manufactured or processed foods available through the retail sector.<sup>409</sup>

The Project Committee comprised members from FRSC, and nine stakeholder representatives, four each from the food industry and the health sector and one from national consumer organisation Choice.<sup>408</sup> The Committee was chaired by Jane Halton, Secretary of the Commonwealth Department of Health and Ageing (DOHA).<sup>317</sup> It met on 13 occasions between 26 March 2012 and 4 November 2013.<sup>410</sup>

All four health representatives and the one from Choice were members of what is described below as the Australian public health policy community: the Australian Chronic Disease Prevention Alliance, the Australian Medical Association, the Obesity Policy Coalition, the Public Health Association of Australia and Choice. Industry representatives were from the Australian Food and Grocery Council (AFGC), Australian Beverages Council, the Australian Industry Group and the Australian National Retail Association. These four bodies did not form a policy community with respect to FoPL, although they would probably all include among their members businesses that were also members of AFGC (s8.3.3.2).

A Technical Design Working Group was tasked with developing options and recommendations for the Project Committee.<sup>411</sup> Co-chairs of the Group were Geoffrey Annison from the AFGC and Michael Moore of the Public Health Association of Australia (PHAA). The Group met 12 times between 20 April 2012 and 29 October 2013.<sup>410</sup>

#### *7.3.2.2 How much to compromise: an issue for health groups involved in the process*

Two Australian key informants involved in the collaborative process indicated that there was some division among health groups as to the degree of compromise that would be acceptable. One said that some health people were arguing for the necessity of gaining the best deal they could manage because there was likely to be a change of (federal) government in 2013, with no chance of any progress after that. The second informant said that some health groups were keen to walk away from the process if the compromise was too great, and to extract as much publicity as possible in doing so.

A third informant involved in the process explained the difficult position faced by public health participants.

The really important thing for us public health advocates is to realise that if industry don't like it they're not going to play. Ministers realise that if industry don't want to play it'll be dead. So wearing our public health hats is quite challenging.

#### *7.3.2.3 The emergence of the Health Star Rating system*

In March 2012, just before the first meeting of the Project Committee, a group of health organisations came together with consumer group Choice to issue a joint statement demanding that a “clear, simple and interpretive” system be introduced. All health organisations with members on the Project Committee were part of the group. Professor Greg Johnson, chairman of the Australian Chronic Disease Prevention Alliance, said that while traffic lights had been ruled out, “we will continue to call for ... an interpretive system that includes colours and symbols”.<sup>412</sup> Michael Moore from the Public Health Association of Australia reiterated the call for a colour-coded system, while stating that health groups were entering the process as “realists”.<sup>412</sup>

For nine months following the Project Committee's initial meeting, no media statements about what the outcome of the process might or should be from any of the parties involved were found by the author's media monitoring (s2.4.1). On 27 November 2012 the drought was broken on the Australian Broadcasting Corporation's Lateline programme. Images were broadcast showing a five-star logo that might appear on food

labels. The presenter described the system as “similar to the rating system used on white goods for energy efficiency”.<sup>413</sup>

When interviewed for the programme Project Committee member Michael Moore said the message would be very simple and straightforward. Five stars indicated a product was very good for you, while half a star meant the product was not one that would be chosen for its nutritional value, but which might be eaten occasionally. Asked about the lack of negative colour coding, Mr Moore replied “that’s one of the reasons I think they [the food industry] are prepared to look at the star system – that it implies the food’s not good for you but doesn’t say it’s bad for you”.<sup>413</sup>

Also interviewed on Lateline was Project Committee member Jane Martin from the Obesity Policy Coalition. When asked about abandoning advocacy for traffic lights, she expressed something of the “realism” for health groups that Michael Moore had referred to in March. With a TLS off the table she said that given urgent need to deal with poor diets and obesity it was critical to develop another scheme.<sup>413</sup>

According to a Project Committee member interviewed by the author, the Committee (including the AFGC’s Geoffrey Annison) had unanimously agreed to a star system at its meeting on 13 September 2012, and had ruled out “binary devices” like the Heart Foundation’s Tick.

In February 2014 Michael Moore was optimistic about the Health Star Rating system (HSR) that emerged from the process initiated by Ministers in December 2011 to become the FoPL outcome of the Review.

When the whole process started, I thought we were going to end up with a bronze medal solution. But as we walked down this path, I realised what we were coming up with was much better.<sup>414</sup>

A judgment on the extent to which his optimism was justified by the end result is central to the discussion on which stakeholder did better from the process, the food industry or public health (s8.2.4).

### **7.3.3 New Zealand work relating to a new interpretive system**

#### *7.3.3.1 Why New Zealand did not join with Australia in developing a FoPL scheme*

In February 2012 the New Zealand Minister for Food Safety was briefed on the Forum's decision to develop a FoPL scheme.<sup>415</sup> The Ministry of Agriculture and Forestry (MAF) advised against participating in a joint process, concerned that the proposed process would be driven by Australian jurisdictions wanting a mandatory FoPL scheme. If New Zealand was to participate, MAF argued, "we would have little influence on the outcome, but through our participation we would be implicated in it". They therefore advised it was "not in New Zealand's interests to participate directly in a joint process".<sup>415 p6</sup>

On the other hand, officials noted two risks in taking no action. First, there was a commercial risk, as New Zealand exporters might have to adopt an Australian scheme if required by Australian supermarkets. Second, Government risked criticism from public health stakeholders if they took no action, leaving Government vulnerable to criticism that it was not taking diet-related diseases seriously. This reasoning led to MAF proposing to the Minister that New Zealand establish a MAF-supported "expert advisory group drawn from industry, public health, academic and consumer stakeholders".<sup>415 p7</sup> MAF advised that this would demonstrate that Government was taking the issue seriously.

To sum up, MAF officials appeared to show the same lack of interest in the use of FoPL to improve public health as was evident in their advice on responding to the recommendations in *Labelling Logic* (s6.6.2.4). Their main concern in doing anything about FoPL appeared to be protecting their Minister against criticism of doing nothing. Their approach appeared consistent with underlying Government policy to reduce regulation and is evidence for an institutional bias favouring industry.

#### *7.3.3.2 The Front of Pack Labelling Advisory Group*

The terms of reference of the Advisory Group<sup>416</sup> reinforce the suggestion above (s7.3.3.1) that the Group was established for political reasons (giving the appearance of



action) rather than to further the introduction of interpretive FoPL in New Zealand. They did not address how a FoPL system might be developed or who might do this.

Membership of the Advisory Group was by invitation. MAF presented the Minister with a list of prospective members, which she endorsed.<sup>417</sup> The Group had nine members – two government officials, two academics, five food industry representatives, and two others. One of the others was from the Nutrition Foundation, an organisation with strong links to the food industry.<sup>356</sup> The other was the “Food industry setting manager” from the Heart Foundation, an organisation which had substantial links with industry, partly as a result of industry participation in its “Pick the Tick” programme.

Data collected as part of Study 1 (s6.5.5) showed that neither the Nutrition Foundation nor the Heart Foundation supported a TLS in their second-round submission to the Review (6.5.4). No one from any of the New Zealand organisations that were TLS supporters was on MAF’s list of prospective group members.<sup>417</sup> This included the Cancer Society, Consumer New Zealand, the Canterbury District Health Board, the Auckland Regional Public Health Service, FOE (Fight the Obesity Epidemic) and Agencies for Nutrition Action (s6.5.5.5).

The contrast between membership of the New Zealand Advisory Group and its Australian counterpart (The Project Committee and Working Groups) could scarcely be more marked. Two of the Australia’s most noted advocates of traffic light labelling (Michael Moore and Jane Martin) were on the Project Committee, with others including Rosemary Stanton on the Technical Design Group (s7.3.2.1). This is not surprising. Members of the New Zealand Advisory Group were nominated by MAF officials;<sup>417</sup> members of the Australian groups were nominated by their organisations including the Public Health Association of Australia and the Australian Chronic Disease Prevention Alliance. The institutional bias evident in Chapter 6 with respect to FoPL favouring the food industry within the New Zealand Government was still persisting.

### 7.3.3.3 *The work of the New Zealand Advisory Group*

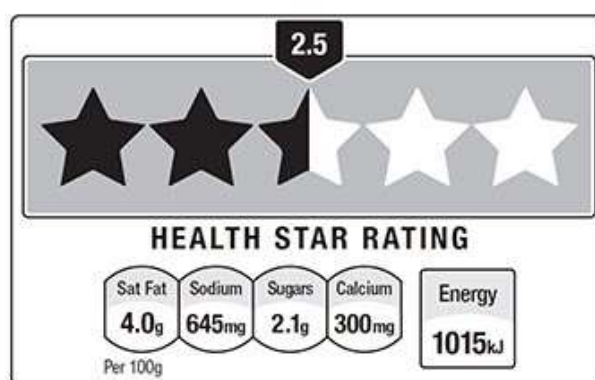
The New Zealand Advisory Group first met on 4 May 2012<sup>418</sup> and made its final report to the Minister of Food Safety in November 2012.<sup>416</sup> The report consisted of two sections: 'Principles for voluntary interpretive front of pack labelling', and 'Steps for developing and implementing a voluntary interpretive front of pack labelling system'. The principles were consistent with developments in Australia. The steps for developing and implementing a FoPL scheme described what would need to be done were New Zealand to develop its own system. There was no suggestion as to who might conduct or drive the process. Should it happen, the Group noted that any FoPL system developed for New Zealand should seek to be as consistent as possible with FoPL in Australia.<sup>416</sup>

### 7.3.4 **The announcement by Ministers in June 2013, and stakeholder responses**

#### 7.3.4.1 *The announcement of the Health Star Rating system by Ministers*

The first formal acknowledgment by Ministers of the HSR system came at the Forum meeting on 14 June 2013.<sup>419</sup> Figure 7.1 gives an example what was proposed at that stage for displaying HSR information on the front of food packaging.<sup>420</sup>

**Figure 7.1** An example of a Health Star Rating label design as at June 2013



By June 2013 the balance of political affiliations on the Forum had move to the right, with four left-leaning and six right-leaning Lead Ministers (Table 7.2).

**Table 7.2 Ministerial Forum membership in June 2013**

<b>Jurisdiction</b>	<b>Lead Minister portfolio</b>	<b>Party</b>	<b>Left-leaning</b>	<b>Right-leaning</b>
Commonwealth	Health & Ageing	Labor	1	0
New Zealand	Food Safety	National	0	1
New South Wales	Primary Industries	National	0	1
Victoria	Health	Liberal	0	1
Queensland	Health	National	0	1
Tasmania	Health	Labor	1	0
South Australia	Health	Labor	1	0
Western Australia	Health	Liberal	0	1
ACT	Health	Labor	1	0
Northern Territory	Health	Country Liberal	0	1
			<u>4</u>	<u>6</u>

In their joint media release following the Forum’s meeting the federal Minister of Health and the Parliamentary Secretary for Health and Ageing stated that the HSR “will apply to packaged, manufactured or processed foods presented ready for sale”.<sup>421</sup>

Included in the Forum’s Communiqué was the threat of a mandatory approach should voluntary implementation fail. It stated:

The preferred implementation option in Australia is a voluntary system, subject to there being consistent and widespread uptake of FoPL. If, following evaluation after two years, a voluntary implementation is found to be unsuccessful, a mandatory approach will be required.<sup>419</sup>

#### *7.3.4.2 Responses from Australian health and consumer groups*

The announcement that an HSR system was to be developed was universally applauded by public health and consumer groups that had been involved in earlier stages of the Review.<sup>330, 420, 422-427</sup>

Chair of the Australian Chronic Disease Prevention Alliance (ACDPA) Professor Greg Johnson saw the star system as having enormous potential for consumers to manage fat, sugar and salt intake. He said the Alliance was “extremely pleased that ministers will consider making the scheme mandatory if widespread uptake is not achieved in two years”.<sup>422</sup>

The Obesity Policy Coalition also welcomed the star system, saying that wide industry uptake and consumer education are key to its success. Executive Manager Jane Martin stressed that it “needs to be widely implemented and adopted for it to be effective because if it's only on some foods it's not going to work in the way it's intended to work”.<sup>426</sup>

Professor Mike Daube, deputy chairman of the National Preventative Health Taskforce, described the Forum’s announcement as “ the most significant step forward in food labelling that we have seen in decades”.<sup>428</sup>

#### *7.3.4.3 Responses from the Australian Food and Grocery Council*

Responses from the Australian Food and Grocery Council (AFGC) are important for answering Research Question 1 (stakeholder positions on FoPL).

The AFGC was well represented on the various working groups that developed the health star rating system (s7.3.2.1). Nevertheless, it was unhappy with the outcomes of the Forum’s meeting in June 2013. The AFGC claimed, in a media release following the meeting, to have warned the Federal Government that serious flaws remained that needed resolution if an effective system was to be implemented. The Forum’s announcement, they said, “had been rushed out by the Federal Government without any cost benefit analysis or evidence that it will achieve the outcomes it is seeking”.<sup>429</sup>

CEO Mr Gary Dawson, however, stated the AFGC's willingness to remain engaged in the development process, and its commitment to working through outstanding issues "to see if a workable solution can be found".<sup>429</sup> Mr Dawson concluded that any move to mandate the star system as proposed would be "a major setback", and would be inconsistent with other government initiatives to "reduce the regulatory burden and enhance export competitiveness of Australia's food processing industry".<sup>429</sup>

The AFGC continued its criticisms of the HSR system in July 2013. In an interview published in the Australian Financial Review on 29 July, Chief Executive Gary Dawson indicated that he was not convinced that industry would adopt the HSR system. It was clear, in fact, that he was opposed to interpretive labelling:

Any system that tried to rate an individual food as healthy or unhealthy is inherently subject to problems. It's what you eat as part of your diet and lifestyle. To say this food is unhealthy is problematic.<sup>430</sup>

#### *7.3.4.4 The AFGC's change of attitude towards the Health Star Rating system*

On 13 June 2013 Michael Moore (Chief Executive of the Public Health Association of Australia (PHAA) and co-chair with the AFGC's Geoffrey Annison of the Technical Design Working Group) made the case that the AFGC had undergone a recent major change of attitude towards the HSR system.<sup>431</sup> On 29 July 2013 he made a stronger statement about what he saw as the AFGC's abrupt change of course. He was "scathing of the conduct of the AFGC, saying it worked in partnership on the star system for two years and then suddenly, just before the June meeting [of the Forum] ..., AFGC started talking up the problems".<sup>430</sup> According to Mr Moore:

All this [the HSR system] was agreed in late May and put to ministers in June as a complete system. In the intervening period the AFGC had its annual conference. Something happened at the AGM and the AFGC switched its position.<sup>432</sup>

There is substantial evidence backing Mr Moore's claim of a substantial change in attitude to the HSRs by the AGFC between May and June 2013. Mr Moore was presumably referring to the AFGC's "Senior Executive Forum" held on 29-31 May.

According to the programme, the “Senior Executive Forum 2013 continues the tradition of bringing together key members of Australia’s \$110 billion food and grocery manufacturing sector to discuss the major industry trends and the challenges that lie ahead”.<sup>433</sup>

It appears that, at the time the programme for the Senior Executive Forum was printed, the AFGC saw itself as committed to, or at least accepting of, the HSR system. The programme referred to work on the system as “well advanced and [with] key aspects of the new scheme ... now being finalised”.<sup>433</sup> No criticism of the HSR system was made or implied in the programme.

Mr Moore appears to be right. Something happened between the printing of the programme for the Senior Executive Forum in May and the Ministerial Forum meeting on 13 June. There is a marked contrast between the statement printed in the programme and those made by Mr Dawson on 29 July 2013 (s7.3.4.3).

A report in the Australian Financial Review on the AFGC meeting referred to a major disagreement between cereal manufacturers who did not want HSRs on their products and confectionery manufacturers to whom the HSR system did not apply.<sup>430</sup>

### **7.3.5 The election of the Abbott Government in Australia: September 2013**

This section relates what happened to the HSR system following the election of the centre-right coalition led by Tony Abbott in the Australian federal election held on 7 September 2013. It replaced the centre-left Australian Labor Party that had held power over the course of the Review. It is relevant to the discussion in Chapter 8 (s8.3.4.3) of the extent to which the ideological stance of governments (tending towards neoliberal or social democratic) appeared to affect FoPL decisions (Research Question 2).

#### *7.3.5.1 Anticipation by stakeholders of a change of government*

Some observers believed that the shadow of a probable change of government had been hanging over what might happen with the HSR system for some time prior to the election. Professor Greg Johnson from the Australian Chronic Disease Prevention

Alliance, for example, told the author in 2012 that this had led some public health people to be more prepared to compromise in order to reach agreement because they believed the next government would not “do anything in regard to public health initiatives around food labelling”. Another Australian informant told the author that he thought the likelihood of a change of government was motivating the AFGC “to go as slowly as possible” in progressing interpretive labelling through the collaborative process.

A media release in August 2013 left little doubt that the AFGC would welcome a change of government. According to Chief Executive Gary Dawson:

The Coalition’s focus on attracting investment, removing unnecessary regulation and listening to industry views on building a competitive sector is very welcome.<sup>434</sup>

#### *7.3.5.2 Stakeholder positioning following the 2013 election*

Both the AFGC, and health and consumer groups, attempted to strengthen their positions relating to the HSR system following the election.

The AFGC’s Chief Executive Gary Dawson told the National Press Club in October 2013 that industry had never agreed to the five-star system, and that the announcement of the system by the former Labor government had been “premature”. “We agreed to be at the table ... [he said, but] we’re still not satisfied that the work that has to be done has been completed”.<sup>435</sup>

In January 2014 the AFGC told its members it had rejected the draft *Health Star Rating System Style Guide* prepared by the Commonwealth Department of Health “as impractical, inflexible and failing to accommodate the AFGC’s existing *Daily Intake Guide*”.<sup>436</sup>

Health and consumer groups, on the other hand, were concerned to defend the HSR system against what they saw as an attempt by the food industry to ‘scuttle’ it. Australian consumer organisation Choice and Cancer Council Australia launched a petition in November 2013 calling on the Forum to proceed with the system as agreed in June.<sup>437</sup>

#### *7.3.5.3 The meeting of the Ministerial Forum in December 2013*

The first meeting of the Ministerial Forum following the September election was chaired by Senator Fiona Nash, Commonwealth Assistant Minister for Health. The Forum continued to work toward introduction of the HSR system by agreeing on membership of an Oversight Committee “to be established in early 2014, with representation from industry, public health and consumers, and government”.<sup>438</sup> The role of the Committee was to monitor and evaluate the effectiveness of the HSR system over time.<sup>438</sup>

#### *7.3.5.4 Criticism of the Forum’s announcement by Australian regulators*

In July 2013 the Australian Office of Best Practice Regulation (OBPR), located in the federal Department of Finance and Deregulation, had issued a notice that the Forum’s HSR announcement was non-compliant with Council of Australian Government (COAG) best practice regulation requirements by proceeding without preparation of a Regulation Impact Statement (RIS).<sup>439</sup> At that time the Forum disregarded the OBPR and proceeded with the HRS system.

According to the Communiqué issued after its December 2013 meeting, the Forum continued to decline supporting preparation of a RIS for the HSR system. Given its absence, Senator Nash informed the Forum that she would direct the Department of Health to arrange a cost benefit analysis.<sup>438</sup> A journalist reported that it is “understood Assistant Health Minister Fiona Nash was in favour of a Regulation Impact Statement being completed, but was overruled ... by state health ministers, who put forward a cost-benefit analysis as an alternative.”<sup>440</sup> At this date seven of the ten Lead Ministers on the Forum were from “right-leaning” jurisdictions (Table 7.3), indicating that support for the HSR was much wider than just from jurisdictions with Labor governments.



**Table 7.3 Ministerial Forum membership in December 2013**

<b>Jurisdiction</b>	<b>Lead Minister portfolio</b>	<b>Party</b>	<b>Left-leaning</b>	<b>Right-leaning</b>
Commonwealth	Health	National	0	1
New Zealand	Food Safety	National	0	1
New South Wales	Primary Industries	National	0	1
Victoria	Health	Liberal	0	1
Queensland	Health	National	0	1
Tasmania	Health	Labor	1	0
South Australia	Health	Labor	1	0
Western Australia	Health	Liberal	0	1
ACT	Health	Labor	1	0
Northern Territory	Health	Country Liberal	0	1
			<b>3</b>	<b>7</b>

The Commonwealth Department of Health commissioned PricewaterhouseCoopers (PwC) to conduct the cost benefit analysis of the HSR system announced by Senator Nash. PwC reported in May 2014.<sup>441</sup> PwC concluded as follows:

If preconditions and critical success factors of the HSR system are met, in PwC's view the available research suggests that the aggregate benefits of the HSR system in the context of multiple public health initiatives, will likely pay back (i.e. meet or exceed) aggregate costs over an indicative five-year implementation period.<sup>441 piii</sup>

PwC also reported that there was "clear evidence that interpretive front-of-pack labelling schemes like the HSR system were "an effective tool to assist consumers to make healthier food choices".<sup>441 piii</sup>

#### *7.3.5.5 Pulling down the Health Star Rating system website*

The *Sydney Morning Herald*, on 8 February 2014, published the first of a series of articles by health editor Amy Corderoy<sup>442</sup> that caused serious embarrassment for Senator Nash. At about midday on 5 February a website hosted by the Department of Health had been launched with the backing of the Forum to assist food manufacturers with developing star ratings for their products. At 8pm that night it was pulled down by Senator Nash and her chief of staff, Alastair Furnival. The following day "a health department

spokeswoman said the site was only a 'draft' made live in 'an inadvertent error' – a statement that has been rejected by two sitting state health ministers, as well as others familiar with the project".<sup>442</sup> Senator Nash later told Parliament that Mr Furnival had asked Department of Health staff to remove the website on her direction.<sup>443</sup>

Ms Corderoy, in her 8 February article, also reported that Mr Furnival had ties with manufacturers of some less healthy foods.<sup>442</sup> This marked the start of a series of revelations that were to lead to Mr Furnival's resignation six days later.<sup>444</sup> After his resignation it emerged that Mr Furnival had links to the alcohol industry, and while Senator Nash's chief of staff had "played a key role in stripping Australia's peak drug and alcohol body of its funding".<sup>445</sup>

The website removal proved very damaging for Senator Nash. Before Mr Furnival's resignation she had told Parliament that he had "no connection with the food industry and is simply doing his job".<sup>446</sup> Soon after she had to 'correct the record'.<sup>443</sup>

The AFGC may have played a role in the website being removed. Chief Executive Gary Dawson revealed that the AFGC had been in contact with Senator Nash's office "regularly over a considerable period". On the day the website was launched then pulled down he had phoned the office to say the launch was "premature"<sup>447</sup> – a term later used by a spokesperson for Senator Nash in explaining the removal.<sup>448</sup> Mr Furnival has been described as "well connected to the AFGC ..., [having] previously worked with at least two companies—Cadbury and Mondelez—whose leaders are on the board of the council".<sup>447</sup> Freedom of information requests showed that the Department of Health had advised Senator Nash of the intention for the website to go live at least a week before launching it on 5 February.<sup>449</sup> There is thus circumstantial evidence that Senator Nash and/or Mr Furnival pulled the website down in response to the phone call from Mr Dawson, a matter of interest when discussing the power of networks in Chapter 8 (s8.3.3).

Mr Furnival's move from the food industry to a politician's office was a manifestation of one aspect of networks: the 'revolving door' between business and politics (4.4.3.8). It has been argued that presence of former industry executives in government gives the

industry concerned a voice in the policy-making process that is virtually guaranteed, something not available to other stakeholders.<sup>160</sup>

There are other examples of the ‘revolving door’ relevant to the Review. Mr Dawson once worked in the office of conservative Australian Prime Minister John Howard.<sup>450</sup> His predecessor at the AFGC, and its Chief Executive during the Review, had previously been the ACT’s Chief Minister.<sup>451</sup> And finally, the Chief Executive of the New Zealand Food and Grocery Council during the Review was a former Member of Parliament from New Zealand’s conservative National Party.<sup>452</sup>

#### *7.3.5.6 The meeting of the Ministerial Forum in June 2014*

The furore over the pulling down of the HSR website appeared to have little, if any, impact on the process set in place by the Forum in December 2013 with the establishment of the Oversight and Advisory Committee. When the Forum next met in June 2014 they considered both the PwC cost benefit analysis and an independent study of the impact of the HSR system for small business.<sup>453</sup> Key decisions by the Ministers were summarised in their Communiqué:

In light of the research presented to Ministers, and the significant goodwill and genuine collaboration amongst many stakeholders, the Forum agreed that the HSR system should be implemented voluntarily over the next five years with a review of the progress of implementation after two years with a commencement date of 27 June 2014.<sup>453</sup>

The announcement by Ministers followed concessions to the food industry made by health and consumer groups. The extension of the time period for implementation from two years to five was one. The other was that existing labels including the Heart Foundation Tick and the AFGC’s Daily Intake Guide could continue to be used together with the Stars.<sup>454</sup>

At this stage the eight of the ten Lead Ministers on the Forum were from jurisdictions with right-leaning governments (Table 7.4).

**Table 7.4 Ministerial Forum membership in June 2014**

<b>Jurisdiction</b>	<b>Lead Minister portfolio</b>	<b>Party</b>	<b>Left-leaning</b>	<b>Right-leaning</b>
Commonwealth	Health	National	0	1
New Zealand	Food Safety	National	0	1
New South Wales	Primary Industries	National	0	1
Victoria	Health	Liberal	0	1
Queensland	Health	National	0	1
Tasmania	Health	Liberal	0	1
South Australia	Health	Labor	1	0
Western Australia	Health	Liberal	0	1
ACT	Health	Labor	1	0
Northern Territory	Health	Country Liberal	0	1
			<u>2</u>	<u>8</u>

#### *7.3.5.7 Responses of Australian stakeholders to the Forum's June 2014 decisions*

The Forum's decisions regarding the HSR system were generally welcomed by Australian industry, health and consumer groups.

The AFGC, in a media release, welcomed the Forum's decisions. CEO Gary Dawson said the "improved design of the Health Star Rating scheme, flexibility around its introduction and acknowledgement that it can coexist with existing front of pack schemes such as the Daily Intake Guide and the Heart Foundation Tick" were significant improvements. He was also pleased that "a voluntary approach with an extended five year implementation period has been adopted".<sup>455</sup>

The Public Health Association of Australia (PHAA) congratulated ministers on reaching the agreement, with Chief Executive Michael Moore saying it was now up to industry to move the HSR system forward. He was pleased that consumers would now "have clear information on the nutritional content of the food that they purchase and consume".<sup>456</sup> Australia's Obesity Policy Coalition (OPC)<sup>457</sup> and Cancer Council NSW<sup>458</sup> made similar comments. The agreement was also welcomed by the National Heart Foundation of Australia<sup>459</sup> and by consumer organisation Choice.<sup>460</sup>

The PHAA, OPC, Cancer Council and Choice had all supported a mandatory traffic light system in their second-round submissions. None chose, in June 2014, to publicly regret that the HSR system was to be voluntary. This suggests that networking by Australian health and consumer groups continued to shape their approach to FoPL and is relevant to the discussion in Chapter 8 of network power (s8.3.3).

### **7.3.6 New Zealand joins the Health Star Rating system**

#### *7.3.6.1 New Zealand's response to the June 2013 Ministerial Forum's announcement*

The Communiqué from Ministers on June 2013 following their decision to proceed with the HSR system recorded that “New Zealand noted the discussion on FoPL in Australia, and will continue to work on voluntary approaches to FoPL”.<sup>419</sup> It soon became clear that the New Zealand Government had decided to give serious consideration to adopting the HSR system. As noted by an official from the Ministry for Primary Industries (MPI) in commenting on the Forum's HSR announcement, the “extent of trans-Tasman trade in food means that it is important that what New Zealand does aligns with Australia”.<sup>461</sup>

New Zealand's Front of Pack Labelling Advisory Group was re-established a fortnight after the Forum's June 2013 meeting. Its main task was to “explore how New Zealand can align with the front of pack labelling system developed in Australia as much as possible while having regard to the principles for voluntary interpretive front of pack labelling developed by the Advisory Group in 2012”.<sup>462</sup> Later, in November 2013, the Minister for Food Safety advised that “once the voluntary Health Star Rating System is finalised in Australia, the New Zealand Government will consider whether it is appropriate to encourage voluntary uptake of a Health Star Rating System here”.<sup>463</sup>

#### *7.3.6.2 The announcement that New Zealand would join the Australian system*

On the day of the Forum's meeting in June 2014 Nikki Kaye, New Zealand's Minister for Food Safety, announced that New Zealand would be adopting the HSR system. The Forum welcomed the announcement, and agreed to a New Zealand representative on

the HSR Advisory Committee (previously the Oversight Committee).<sup>453</sup> According to Ms Kaye, joining the HSR system had been recommended by the New Zealand FoPL Advisory Group. Unlike the traffic light system, she said, the HSR system was consistent with two principles established by the Advisory Group: it evaluated the whole food and not just individual nutrients, and it was based on both positive and negative nutrients. Ms Kaye believed that adopting the HSRs was “a very positive step towards empowering New Zealanders to make healthier food choices”.<sup>464</sup>

In a later media statement Ms Kaye stated that the HSR system had been “robustly tested and supported by a New Zealand advisory group made up of respected nutritionists and public health experts”.<sup>465</sup> This misrepresented the makeup of the group, a majority of whom were from the food industry (s7.3.3.2).

#### *7.3.6.3 Calls for joining with Australia prior to the Government announcement*

In November 2013 the cross-party Health Select Committee of the New Zealand Parliament recommended monitoring progress with the HSR system in Australia and introducing it in New Zealand if it showed “strong evidence of success”. They went beyond Ms Kaye’s insistence that the system was to be voluntary by deciding, if there was not “wide compliance”, to “move to a compulsory system (provided there is sufficient evidence) within three years”.<sup>466 p58</sup>

Many in the New Zealand public health community had already moved to support the HSR system before the June 2014 announcement that New Zealand was to join it. In April and May 2014 an “expert panel” comprising 52 New Zealand-based representatives from the health sector recommended that New Zealand implement the HSR system, and that it become mandatory “if there is not widespread uptake by industry”.<sup>467 p18</sup>

#### *7.3.6.4 Responses of New Zealand stakeholders to joining with Australia*

Both the New Zealand Food and Grocery Council<sup>468</sup> and the Association of New Zealand Advertisers<sup>469</sup> welcomed the New Zealand Government decision to join the HSR system.

Responses from New Zealand public health and consumer organisations lacked the scope and unity of those from their Australian counterparts. There did not appear, for example, to be any response from health organisations other than the New Zealand Medical Association<sup>470</sup> and the National Heart Foundation,<sup>471</sup> both of which welcomed the decision. There was also, unlike Australia, a mix of approaches over whether to call for mandatory implementation. Consumer (New Zealand's consumer organisation) called on food manufacturers "to start rolling out the ratings", and argued the Government should make the HSR system mandatory if manufacturers failed to take it up.<sup>472</sup> Prominent public health researcher Professor Boyd Swinburn praised the HSR system, and thought it would need to become mandatory "to ensure a level playing field".<sup>473</sup>

### **7.3.7 Governance of the Health Star Rating system**

The Australian HSR website described the governance arrangements for the HSR system as at March 2018.<sup>474</sup> Three committees were involved. One was the Ministerial Forum. The second, which reported to the Forum, was the Food Regulation Standing Committee (FRSC) comprised of senior officials from the jurisdictions represented on the Forum. In November 2015 the FRSC absorbed the Front-of-Pack Labelling Steering Committee which had led the process to develop the HSR system. Third was the Health Star Rating Advisory Committee (HSRAC) comprising Australian and New Zealand government officials as well as representatives from industry, public health and consumer groups. The HSRAC, which reports to the FRSC, was responsible for overseeing the implementation, marketing, monitoring and evaluation of the HSR system.

The ten members of the HSRAC in March 2018 included four government officials (one of whom represented New Zealand), an 'independent' dietitian who had worked on public health nutrition in the food industry, and representatives from the food industry (two), health (two) and Australian consumer organisation Choice (one).<sup>475</sup> The Choice member and one of the public health members had both been on the Review Panel with its very strong public health focus. The other public health member had been part of the public health policy community discussed below (s8.3.3). The chair was a key informant

for this study and a strong public health advocate. Excluding government members, then, public health appeared to have stronger representation than did the food industry.

### **7.3.8 Implementation of the Health Star Rating system**

#### *7.3.8.1 The Health Star Rating system website is re-launched*

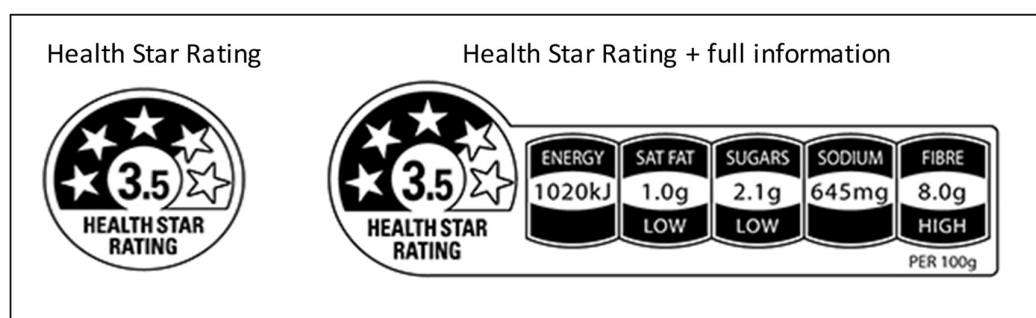
On 6 December 2014 Australia's Assistant Health Minister Senator Fiona Nash announced what was effectively the re-launch of the HSR website after an earlier version had been pulled down by the Senator 10 months earlier (s7.3.5.5).<sup>476, 477</sup> Appearing beside her were Michael Moore, Chief Executive of the Public Health Association of Australia (PHAA), and Mary Barry, Chief Executive of the National Heart Foundation. Both praised Senator Nash for making the stars a reality. The website included the HSR Style Guide and HSR calculator for use by the food industry. Following a decision by the Ministerial Forum in June 2014, these had earlier been made available on the Australian Health Ministers' Advisory Council website "to ensure industry can adopt the system without delay".<sup>453</sup>

#### *7.3.8.2 The final Health Star Rating label design*

An alternative design to the oblong image first announced in 2013 was proposed by industry representatives, and agreed in 2014 following workshops and consumer testing.<sup>477</sup> The two images in Figure 7.2 from the HSR website show ways in which the ratings could appear on food packaging.<sup>478</sup> On the left is the minimum information that can be displayed on the front of packs – just the Health Star Rating. On the right is the maximum information – the Rating, an energy icon, three negative nutrient icons, and one positive nutrient icon. The terms "LOW" and "HIGH" could be added for saturated fat, sugars and sodium when the nutrient was present at levels consistent with requirements in the Australia New Zealand Food Standards Code (Standard 1.2.7 – Nutrition, Health and Related Claims).<sup>479</sup> The HSR Style Guide set out a number of variations on the information that could be included, and how it was presented. Food manufacturers and retailers were encouraged to include the full information where practicable.<sup>479</sup>



**Figure 7.2 Examples of the final Health Star Rating graphic**



The -number of stars would be derived by food manufacturers or retailers by applying the HSR Calculator, which takes into account energy, saturated fat, total sugars, sodium, protein, dietary fibre, fruit, vegetables, nuts and legumes. The more stars, the healthier the nutrient profile of the product.<sup>479</sup>

#### *7.3.8.3 Products to which the Health Star Rating system applied*

The HSR Style Guide provided information about the products for which the HSR system was intended. It was “optimised for application to packaged food products presented for retail sale through supermarkets and similar retail outlets”.<sup>479</sup> p1 As a general rule, use of the system was encouraged if the product carried a Nutrition Information Panel (NIP). The system was not intended for foods where a NIP was not required, including single nutrient foods, but nevertheless could be used. It was not to be used for a limited number of products including infant formula and alcoholic beverages.<sup>479</sup>

#### *7.3.8.4 Implementation in New Zealand*

The New Zealand HSR system web page used links to the Australian HSR website for the food industry to access the HSR style guide and calculator.<sup>480</sup> This placed New Zealand companies in an identical position to those in Australia should they decide to participate in the system. New Zealand was now back into a system fully integrated with that in Australia. This is relevant to the discussion in Chapter 8 (s8.3.5.4) on the impact of the move towards economic integration on FoPL decisions.

### **7.3.9 Uptake of the HSR system by industry**

Uptake of the HSR system by the food industry made steady progress from its first occurrence in April 2014.<sup>481</sup> By June 2016 a HSR was on 5,560 products in Australia, “nearly five times more than for the Daily Intake Guide at the corresponding time point”.<sup>482</sup> <sup>p16</sup> In 2016 there were 807 products in New Zealand supermarkets that displayed a HSR, 5.3% of products in a database.<sup>483</sup>

For both countries, in 2016, products with higher HSR ratings were more likely to use the system. In Australia 87% had from 4.0 to 5.0 stars.<sup>482</sup> In New Zealand 84% of HSR-labelled products displayed 3.0 to 5.0 stars.<sup>483</sup>

A study of the use of HSR labels in 2017 in Australian supermarkets reported that a HSR was displayed on 28% of 15,767 products. HSR-labelled products had a mean of 3.4 stars compared to 2.7 stars for products not displaying a HSR. For all except three of more than 100 manufacturers, the mean number of stars for HSR-labelled products was higher than that for unlabelled products. The authors recommended, to address findings such as this, that the HSR system become mandatory following the five year review in 2019.<sup>484</sup>

A 2016 survey of 752 ready-to-drink (600ml or less) non-dairy and non-alcoholic beverages found in South Australian supermarkets reported that 6.8% were displaying the HSR logo and a further 28.5% an energy-only icon, a permitted option. Of the 52 products showing the logo, almost all (94%) had 5-star ratings. These were predominantly juices with high amounts of sugar. The authors called for removal of the energy-only icon as an option, adjustment of the HSR algorithm so that 100% juices could not achieve five stars, and for the HSR system to be made mandatory.<sup>485</sup>

### **7.3.10 Research on the effectiveness of the HSR system**

The HSR will have been demonstrated to be effective when it can be shown that it has contributed to a population-level shift to more healthy eating and, ideally, a more healthy population. Knowing something of its effectiveness is relevant to Research Question 3 (what can be learned from this case study to ensure better public health

outcomes). Whether or not better health outcomes have been achieved as a result of introduction of the HSR system is important for informing what the lessons might be for public health.

Finding evidence of effectiveness in the early stages of implementation is not easy. There are two types of evidence relevant for FoPL systems. First is evidence that consumers are purchasing more healthy products. This is still only indirect evidence as healthier purchases still need to move from consumers' shopping bags to inclusion in their diet, and from here to improved health. Nevertheless evidence of more healthy purchasing can reasonably be regarded as evidence of at least some success.

The Review Panel, as already noted (s6.6.1.3), pointed out that changes in consumer behaviour are not easily measured. A multitude of factors influence both consumer behaviour and eventual health outcomes, and it is not easy to tease out the specific contribution of just one factor such as FoPL. As well, it takes time to significantly change consumer behaviour, and even more time to see the fruits of any change in health outcomes. It is not surprising, then, that no direct evidence relating to changes in consumer shopping behaviour as a result of introduction of the HSR was found in the literature search conducted in September 2018 (s2.3.7). The HSR system is relatively young, and a HSR is absent on many products, particularly those that are less healthy.

There is a second way in which effectiveness might be assessed: seeing whether more healthy products were getting into shopping bags as a result of product reformulation. Relevant evidence for effectiveness would be that manufacturers were reformulating products to get higher HSRs, that the changes they made increased the healthiness of the products, and that consumers continued to purchase the reformulated products at the same rate.

A well-designed New Zealand study examined the effect of the HSR system on product reformulation two years after it had been implemented June 2014 (Ni Mhurchu, Eyles and Choi (2017)).<sup>486</sup> Supermarket surveys of packaged food and beverage labelling and nutrient composition were undertaken in 2014 (before the HSR system) and in 2016

(two years after it was launched). Small but statistically significant changes were observed when products with a HSR in 2016 were compared with the same products from 2014. There was a reduction in energy density and sodium, and an increase in fibre. These changes were not found in foods without a HSR in 2016. In particular, sodium decreased by 4.6% in HSR products, while increasing by 3.1% in non-HSR products. Information from an independent food purchasing database suggested that greater volumes of the reformulated HSR products were being purchased. The authors concluded that, while there had been some healthier product reformulation, there would need to be greater uptake of the HSR system right across the packaged food supply if the observed reformulation was to deliver meaningful benefits at a population level.

An Australian study (Mantilla Herrera and colleagues, 2018)<sup>487</sup> used similar methods to the New Zealand study to compare reformulation on HSR and non-HSR products between 2013 and 2016. The study was primarily concerned with modelling the effect of product reformulation on mean body weight, and only considered changes in energy density. In 2016 the HSR products had 7.11 kJ/100g less than the same products in 2013, a greater reduction than for non-HSR products. The authors recommended, to address findings such as this, that the HSR system become mandatory following the five year review in 2019.

#### **7.3.11 Research on the validity of the HSR system**

A growing body of research conducted in Australia and New Zealand is looking at the validity of the Health Star Rating system. ‘Validity’ as used here means the extent to which HSRs correctly inform consumers about the healthiness of particular products and help them identify healthier choices. High validity is indicative that an intervention has the potential to be effective. Most of the research reported here attempts to assess validity by comparing the HSR system against either nutrient profiling systems or other front-of-pack indicators of food healthiness. As with the research on effectiveness (s7.3.10), validity studies are relevant to Research Question 3.

A literature review conducted in September 2018 (s2.3.1) found 22 studies relevant to the validity of the HSR system. Research in this area has been growing: from one report published in each of 2014<sup>488</sup> and 2015<sup>489</sup> to five in 2016,<sup>490-494</sup> seven in 2017<sup>495-501</sup> and eight in 2018 as at September.<sup>502-509</sup>

#### *7.3.11.1 Randomised controlled trials of consumer food purchases*

Two similar randomised controlled trials, one in New Zealand (Ni Mhurchu and colleagues, 2017)<sup>501</sup> and the other in Australia (Neal and colleagues, 2017),<sup>500</sup> were conducted to simulate the effect of different FoPL labels on food purchases. Ni Mhurchu and Neal were among the co-authors for both papers. Both studies randomly assigned participants to different FoPL conditions, and both used a smartphone application to scan the bar-codes of packaged foods while shopping. In both cases the primary outcome was the mean healthiness of all packaged food purchases over a four-week period as measured by a nutrient profile scoring system.

The New Zealand study<sup>501</sup> assigned participants to one of three groups, those receiving traffic light labels (TLLs), HSR labels, or – for the control group – nutrition information panels (NIPs) on their smartphones. Neither the TLL nor HSR groups had significantly different nutrient profile scores for food purchases from the control group following the intervention. The TLL and HSR groups were, however, significantly more likely than the control group to report the assigned labels useful and easy to understand. Further, frequent users of the labelling intervention in both the TLL and HRS groups had significantly better nutrient profile scores than frequent users in the control group.

The authors of this New Zealand study acknowledged several limitations. One was a likely selection bias resulting in participants being more interested in healthy eating than the general population. This could result in a ceiling effect because diets were already relatively healthy. Another was that the HSR system at the time of the intervention lacked the support of a national marketing campaign to raise awareness and shift social norms.

A secondary analysis of the New Zealand data showed a significant positive association between label use and the healthiness of products purchased when all three groups (TLL, HSR and NIP) were combined. For the authors this suggested that nutrition labels, including the HSR, may influence healthier food purchases among consumers who choose to use them.<sup>509</sup>

The Australian study<sup>500</sup> had the same design as the New Zealand study except that it included two further intervention groups. In addition to HSR and TLLs were daily intakes guides (DIG) and a text health recommendation or warning (WARN). Only WARN produced a significant increase in the healthiness of food purchases compared to the NIP control group. The mean healthiness of HSR group purchases was significantly “non-inferior” to each of the other intervention groups. Further, HSRs were perceived as more useful than DIG and easier to understand than DIG or TLLs. The authors considered that these results provided support for the policy decision to introduce the HSR system.

#### *7.3.11.2 Alignment of the HSR system with the Australian Dietary Guidelines*

One way used to assess the validity of the HSR system has been to compare the ratings it produces against the (Australian) National Health and Medical Research Council’s *Australian Dietary Guidelines* (ADG).<sup>510</sup> These guidelines distinguish core foods that form the basis of a healthy diet from discretionary foods that are generally energy-dense and nutrient-poor.<sup>510 p144</sup>

Seven Australian studies were located that have reported or implied broad consistency between the HSR system and the ADG.<sup>489, 490, 494, 496, 497, 506, 507</sup> These studies also indicated areas where the HSR system could be improved. Two studies, for example, found that including added sugars in the HSR algorithm would enable better discrimination between core and discretionary foods.<sup>496, 497</sup>

A systematic and comprehensive analysis of the alignment between the HSR system and the ADG was conducted by Jones, Radholm and Neal (2018).<sup>506</sup> Using a database including 23,460 core and 23,656 discretionary products they found that 86.6% matched with their HSR classification. The median HSR score for core products was 4.0 stars, and

for discretionary products 2.0 stars. Of the 6324 products that did not match, the authors determined that for 83% this was because of an ADG failure, with the remaining 17% (1078 products) resulting from a failure of the HSR algorithm. Overall, then, the HSR's rate of failure to perform as it should, as determined by the authors, was 1078 of 47,116 products (2.3%).

A similar study to that by Jones and colleagues found greater discrepancy between the HSR system and the ADG, and came to quite different conclusions (Lawrence, Dickie and Woods, 2016).<sup>507</sup> Five of the other six studies looking at alignment between the HSR system and the ADGT, including Jones and colleagues, had used a database managed by the George Institute in Sydney. The dataset used by Lawrence and colleagues was the 1269 new products displaying a HSR that entered the Australian market from the launch of the HSR system in June 2014 to June 2017. The median HSR was 2.5 stars for discretionary and 4.0 stars for core foods. More than half (56.7%) of discretionary foods had 2.5 stars or higher. The authors concluded that the HSR system was undermining the ADG, which was assumed to be the superior system. This appeared to be based on the authors' preference for what they called "food based dietary guidelines" using a "holistic paradigm" (such as the ADG) rather than nutrient-based front-of-pack schemes (such as the HSR system) which they saw as operating within a "reductionist paradigm".

#### *7.3.11.3 Alignment of the HSR system with traffic light labelling*

A New Zealand experiment by Maubach and Hoek (2014)<sup>488</sup> found that multiple traffic light labels were better than HSRs at depressing participant preferences for less healthy breakfast cereals. The experimenters constructed a version of HSRs based on information available in late 2012. The study was conducted before June 2014, so before final details of the HSR system had been announced. Nevertheless the logo they used provided similar information to the final design.

A quite different result emerged from an Australian experiment which involved 2069 adults and children aged 10+ years who completed an online discrete choice task with mock food packages (Talati and colleagues, 2017).<sup>498</sup> Three FoPL options were used:

HSR, Multiple Traffic Lights (MTL) and the non-interpretive DIG. Each FoPL option included a healthy, moderately healthy and unhealthy version. The HSR system produced the largest and only significant difference in choices with 40% choosing the healthy and 23% the unhealthy option. For MTL 35% chose the healthy and 32% the unhealthy option. Similarly, there was a large, significant increase in willingness to pay for healthier products relative to less healthy products in the HSR condition, but no significant increase for MTL or DIG. Two other analyses of the data, both with Talati as the first author, similarly found that the HSR system outperformed MTL and DIG<sup>492, 499</sup> This was also the case in an earlier, qualitative study led by Talati which informed the hypotheses of the quantitative experiment.<sup>493</sup> Finally, in a further report from a subset of the quantitative data, Talati and colleagues (2018) found that both HSR and MTL labels, but not DIG, had a small effect on judgments that smaller portion sizes were appropriate for some foods.<sup>508</sup>

Dunford and colleagues (2015) reported that the HSR system aligned with the Australian Dietary Guidelines better than did two traffic light schemes used in New South Wales.<sup>489</sup> And finally, Neal and colleagues (2017) reported that consumers perceived HSR labels as easier to understand than traffic light labels while being not significantly different on other measures.<sup>500</sup>

On balance, the research conducted in Australia and New Zealand suggests that HSR labels performed at least as well as traffic light labels. A possible explanation for the discrepant New Zealand result is that it was conducted before the launch of the HSR system, whereas for later studies participants had some familiarity with and knowledge of the HSR system.

#### *7.3.11.4 Alignment of the HSR system with other food classification systems*

The Nutrient Profiling Scoring Criterion (NPSC) was developed by Food Standards Australia New Zealand (FSANZ). It is used to determine whether, based on its nutrient profile, a food is suitable for a health claim to be made.<sup>511</sup> Dunford and colleagues (2018) examined over 41,000 packaged products, finding that 97.3% of those with a star rating of 3.5 or more were



eligible to display a health claim, while 94.3% with less than 3.5 were ineligible. The authors concluded that while there was good overall agreement between the two systems, the lack of complete alignment was potentially confusing for consumers and should be addressed.

Cooper, Felly and Lowe (2017)<sup>495</sup> attempted to assess the validity of the HSR system when applied to dairy products by comparing it against a food classification system based on the level of processing. The authors appeared to assume that “ultra-processed” foods were all unhealthy, and that a high HSR for an ultra-processed food indicated a failure for the HSR system. They concluded that the HSR system was valid for packaged dairy beverages, but not for other dairy products including yoghurts and cheeses.

#### *7.3.11.5 Other studies assessing HSR validity*

Two near-identical experimental studies conducted in New Zealand by Hamlin and McNeill involved showing pairs of labels to shoppers exiting supermarkets and asking them which one of a pair they would choose. In the 2014 study<sup>491</sup> (before the public launch of the Health Star Rating system) the presence of a health star label, irrespective of whether it included five stars or two, significantly reduced consumer preferences ( $p < .05$ ). This effect, which if externally valid would be a serious setback for the HSR system, disappeared when the study was repeated in 2016.<sup>505</sup> Instead the five-star label increased, and the two-star label decreased, consumer preferences but this was not statistically significant. The authors noted that heavy use of health star ratings for advertising purposes on breakfast cereals occurred between the two studies. They concluded that the results, while weak, were moving in the right direction to suggest that the HRS system might be beginning to influence consumer choice in the way its designers intended.

In an online choice experiment, Billich and colleagues (2018)<sup>502</sup> randomly assigned 994 young Australian adults to one of five groups. Four groups saw a different front-of-pack label: a graphic warning (dental caries), text warning, number of teaspoons of added

sugar, and HSR, with no label for the fifth (control) group. All four label groups significantly reduced selection of a sugar-sweetened beverage (SSB) compared with the control group, with the graphic warning having the greatest effect. The authors concluded that while all the labels and particularly those with graphic warnings could potentially decrease SSB purchases, the Health Star Rating system was the most viable option for Australia since it was already in effect. A further advantage of the HSRs over the other labels was that they significantly increased selection of healthier drink options.

Grafenauer and Curtain, 2018<sup>504</sup> conducted an audit in 2017 of bread products in Sydney supermarkets and a bakery franchise. The mean HSR for white loaves was 3.7 stars compared to 4.2 for whole grain varieties. The authors considered this difference insufficient and proposed that whole grain content be added to the HSR algorithm. Nevertheless, this study can be seen as to some extent supporting the validity of the HSR system since it rated whole grain breads as generally more healthy than white breads from other features of the algorithm.

Finally, the study by Mantilla Herrera and colleagues (2018) referred to above (s7.3.10) was primarily concerned to model the effect that food reformulation resulting from implementation of the HSR system on energy intake at a population level. Reductions in energy between 2013 and 2016 were found more in products with a HSR than those without. Findings suggested that small reductions in energy intake resulting from HSR labelling could potentially reduce population levels of obesity and the burden of obesity-related diseases. The authors acknowledged that a number of assumptions underlying their modelling may not have been correct, and urged caution in interpreting the results.<sup>487</sup>

#### *7.3.11.6 Summary*

There is now a substantial and growing body of research that has looked at the validity of the HSR system – the extent to which HSRs correctly inform consumers about the healthiness of particular products and help them identify healthier choices.

Two major randomised controlled trials – one in New Zealand and the other in Australia – failed to show that consumers made more healthy choices after seeing HSRs displayed on the smartphones when supermarket shopping. The HSR system, however, did no worse than traffic light labels (TLLs) in both studies (s7.3.11.1).

Seven studies reported or implied that there was a broad consistency between the HSR system and the Australian Dietary Guidelines (ADG), but that nevertheless alignment could be improved by adjustments to the HSR algorithm. Five of these studies used databases managed by the George Institute. A study using a different database found less consistency, and was critical of the HSR system for its lack of alignment with the ADG (s7.3.11.2).

Different conclusions were also drawn about the alignment of HSRs with TLLs from studies using different methodologies. A New Zealand study found TLLs to have greater validity, but the reverse was true for several Australian studies (s7.3.11.3). There were also mixed results from studies looking at the HSR system against the FSANZ Nutrient Profiling Scoring System (good alignment) and a food classification system based on the extent to which food had been processed (limited alignment) (s7.3.11.4).

Other studies considered were generally encouraging in terms of the validity of the HSR system (7.3.11.5).

### **7.3.12 Consumer awareness and use of the HSR system**

Consumer awareness of the HSR system has been growing in both Australia and New Zealand. In a series of surveys of more than 2000 Australian adults ‘prompted awareness’ of the HSR system increased from 33% in April 2015 to 67% in July 2016, with ‘unprompted awareness’ increasing from 3% to 13% over the same period.<sup>482</sup> By mid-2017 ‘promoted awareness’ had grown to 82%.<sup>512</sup> New Zealand results were very similar: ‘prompted awareness’ increased from 38% in 2015 to 61% in 2016, while ‘unprompted awareness’ increased from 3% to 9% over the two years.<sup>513</sup>

Use of the HSR system by consumers also appears to have been growing. Of Australian consumers aware of the HSR system in July 2016, 56% reported purchasing an HSR product, with almost 60% saying the HSR was a factor in purchasing decisions.<sup>482</sup> New Zealand results (using a different base) showed that reported use of the HSR system increased from around 10% of shoppers in 2015 to 20% in 2016.<sup>513</sup> By early 2018, 70% of surveyed Australians were saying they had bought a HSR product in the last 3 months, with 46% reporting they purchased a HSR product when shopping ‘always’ or ‘most of the time’.<sup>514</sup>

### **7.3.13 Public support for the HSR system**

Public support for the HSR system has also been reported as improving. The Australian Heart Foundation reported, as at July 2016, a continuing increase in the proportion of respondents viewing the HSR system as “trustworthy, easy to understand, credible and reliable”.<sup>482 p19</sup> In July 2016 around 54% of Australian survey respondents said they trusted the HSR system<sup>482</sup> compared to about 39% of New Zealand respondents at around the same time.<sup>513</sup> By early 2018 trust in the HSR system by surveyed Australians had increased to 59%, with a majority of respondents also reporting it credible, reliable and transparent.<sup>514</sup>

Consumer research company Canstar Blue surveyed 3000 Australians in 2015 and reported that nearly 80% of respondents “agreed with the proposition that all companies should be using the [HSR] system which is currently voluntary”.<sup>515 p1</sup>

Ten of 15 members of a ‘citizen’s jury’ held in 2016 and comprising 15 randomly selected and demographically representative Adelaide residents agreed with a majority statement including the following:

There should be regulations for standards of consumer information demonstrated by a star-rating system (based on higher content of sodium, energy, saturated fats and sugar).<sup>516 p138</sup>

The other five jurors agreed that:

There is sufficient regulatory control by industry and government and there is no need for further regulation. It is a matter of individual responsibility.<sup>516 p138</sup>

An earlier (2015) and similar Adelaide-based jury was convened to consider what laws, if any, there should be in Australia to address childhood obesity. Mandatory front-of-pack interpretive labelling of food and drink was ranked second among ten interventions, behind school-based nutrition education and health promotion.<sup>517</sup>

A survey of 2732 representative South Australians aged 15 years found that 90% of respondents supported mandatory nutrition front-of-pack nutrition labelling for packaged foods.<sup>518</sup> (Only the abstract appeared to be available in December 2018.)

Sainsbury and colleagues (2018) reported that a large majority (92.5%) of 2011 Australian adults completing an online survey considered overweight and obesity to be at least a somewhat serious problem, with 86.1% agreeing there should be at least a little government regulation to address this.<sup>519</sup> The study did not include FoPL as one of the interventions on which the views of respondents were sought.

Pettigrew and colleagues (2017) reported that the HSR system was the most preferred FoPL option across all respondent subgroups for 2058 Australian consumers (1558 adults and 500 children) in an online survey. Overall, 44% preferred the HSR system, with 29% preferring multiple traffic lights, 20% preferring the Daily Intake Guide (DIG), and 8% expressing no preference. Qualitative comments indicated that ease of use and easiness to understand were the main reasons for respondents preferring HSR labels.<sup>520</sup>

A government-commissioned analysis of Australian press coverage of the HSR system over the two years following its introduction in June 2014 throws some light on what could be influencing public opinion. The most favourable coverage occurred in late 2014 when Ministerial Forum chair Senator Fiona Nash and the Public Health Association's Michael Moore together promoted the relaunch of the HSR website. This had followed earlier frequent criticism of the federal government after the website had been pulled offline earlier in the year. In the first half of 2016 the HSR system was the focus of criticism that the food industry was selective in choosing which products on which to

display a HSR. This resulted in the leading unfavourable message overall, that “HSR allows the food industry to game the system”. Spokespeople from consumer organisation CHOICE and the Obesity Policy Coalition were frequently cited as making this criticism. The three leading favourable messages, on the one hand, came mainly from the food industry: that the HSR system “helps promote food products” and “drives innovation and product reformulation”, and that “the industry is acting to introduce the system”.<sup>521</sup>

To summarise, public support for the HSR system appeared, at least by 2017, to be strong. This includes strong support for making the system mandatory.

#### **7.3.14 Stakeholder views on the HSR system from 2015 to 2018**

This section reports views on the HSR system expressed by stakeholders from 2015 to mid-2018 as part the evidence gathered in relation to Research Question 1 (stakeholder positions on FoPL).

##### *7.3.14.1 Government*

In January 2017 the Health Star Rating Advisory Committee was very positive about what had been achieved, concluding that “implementation of the HSR system has progressed well over the first two years surpassing all expectations”.<sup>522 p5</sup> The chair of the Ministerial Forum was also very positive in November 2017 when issuing a glowing statement about progress in implementing the HSR system.<sup>523</sup>

The Ministerial Forum, at its meeting in June 2018, continued the positive tone when noting continuing progress with implementation of the system. Ministers also noted progress with the independent review of the HSR system, with consultation on the draft review report planned for early 2019.<sup>524</sup> By this time membership of the Forum had swung back to having a left-leaning majority, with five Lead Ministers from the Australian Labor Party and one from the New Zealand Labour Party (Table 7.5).

**Table 7.5 Ministerial Forum membership in June 2018**

<b>Jurisdiction</b>	<b>Lead Minister portfolio</b>	<b>Party</b>	<b>Left-leaning</b>	<b>Right-leaning</b>
Commonwealth	Rural Health	National	0	1
New Zealand	Food Safety	Labour	1	0
New South Wales	Primary Industries	National	0	1
Victoria	Health	Labor	1	0
Queensland	Health	Labor	1	0
Tasmania	Health	Liberal	0	1
South Australia	Health & Wellbeing	Liberal	0	1
Western Australia	Health	Labor	1	0
ACT	Health & Wellbeing	Labor	1	0
Northern Territory	Health	Labor	<u>1</u>	<u>0</u>
			<b>6</b>	<b>4</b>

#### *7.3.14.2 The food industry*

The New Zealand Food and Grocery Council (NZFGC), in June 2017, described the HSR system as “very successful and ... adopted widely by industry in a relatively short time ... with increasing recognition of the system by consumers”.<sup>525 p2</sup>

The AFGC did not attempt to evaluate the HSR system in its 2017 Annual Report. It reported that AFGC had provided an industry perspective on the first two years of implementation, and input into planning the five year review due in 2019. The Report went on to stress that any changes to the scheme must be supported by evidence, consistent with the original objectives, and allow a substantial transition period so old stock could be cleared.<sup>526 p6</sup>

In mid-2016 a qualitative study was conducted by the New Zealand’s Ministry for Primary Industries (MPI) based on 17 in-depth interviews with a range of New Zealand food businesses.<sup>513</sup> Four groups were identified: ‘Advocates’ who had embraced the HSR system, ‘Alert’ (watching and waiting), ‘Ambivalent’ (low knowledge and little regard), and ‘Anti’ who were philosophically opposed and regarded the system as having significant flaws.

MPI reported that the 'Anti' group considered "the HSR system:

- is not relevant for their consumers
- does not take into account unprocessed food or food additives
- is too simplistic as it does not distinguish between different types of fats and sugars
- is used as a marketing tool and may be open to manipulation
- is not being complied with
- is at odds with organisational values".<sup>513 p42</sup>

MPI concluded that the 'Anti' group "is therefore unlikely to implement the HSR system unless forced to via legislation".<sup>513 p42</sup>

#### *7.3.14.3 Health organisations*

Health organisations in Australia and New Zealand shared the same view about the Health Star Rating system over the period from 2016 to early 2018. They were strong supporters of the system, but believed it had flaws that prevented it from being as effective as it should be in promoting healthy eating.<sup>527-532</sup>

#### *7.3.14.4 Consumer organisations*

In 2017 Australian consumer organisation Choice looked forward to the five year review of the HSR system as an opportunity to improve it "to make sure health stars work for you [consumers], not for food companies".<sup>533</sup> New Zealand's national organisation Consumer reported it had been focusing on changes required to make the HSR work as it was intended in helping shoppers make healthier food choices.<sup>534</sup>

### **7.3.15 Stakeholder issues with the current HSR system and calls for change**

A further insight into stakeholder views on the HSR system can be gleaned from considering four contentious issues: making the HSR system mandatory, including added sugar in the HSR algorithm, use of 'loopholes' by food manufacturers to misrepresent



the healthiness of some products, and whether the HSR system should apply across all food categories rather than just within them.

#### *7.3.15.1 Making the HSR system mandatory*

A call to make the HSR system mandatory was widely shared and strongly made across public health and nutrition groups and individuals. Its voluntary nature was commonly seen as the most serious flaw in the current system, and a major impediment to making it an effective public health tool.<sup>528, 529, 532, 535-538</sup>

#### *7.3.15.2 Added sugar*

A frequently made criticism of the HSR system is that less healthy foods with added sugar often achieve higher star ratings than more healthy and less processed foods, badly damaging public support for the system and requiring change.<sup>528, 529, 532, 539-542</sup> Two research reports, both published in 2017, indicated that the validity of the HSR system could be improved by changing the HSR algorithm to take account of added sugars.<sup>496, 497</sup>

Nutritionist Dr Rosemary Stanton, who was involved early in developing the HSR system, said health representatives had wanted added sugar taken into account, but had lost the fight to the food industry.<sup>543</sup>

In 2017 the New Zealand Food and Grocery Council remained opposed to any change.<sup>544</sup> However, by late 2017 the Technical Advisory Committee reporting to the HSRAC had “commenced discussions about incorporating added sugar versus total sugar in the HSR system”.<sup>545</sup>

#### *7.3.15.3 Exploitation of loopholes in the HSR system by food companies*

There is a widespread view that some food companies have manipulated or ‘gamed’ the HSR system by exploiting loopholes to suggest products are more healthy than in fact they are.<sup>546-549</sup>

### Nutri-Grain and recipe tweaking

One way in which food manufacturers have been accused of exploiting the HSR system is by tweaking recipes to achieve a relatively high HSR rating while leaving the product less than healthy in the view of nutritionists. In 2015, for example, Kellogg's added fibre and slightly reduced sugar and salt so that breakfast cereal Nutri-Grain could carry four stars. It nevertheless remained a relatively high sugar product not recommended as a regular part of a healthy diet.<sup>550</sup> Australian public health nutritionist Rosemary Stanton noted that even after reformulation sugar in Nutri-Grain remained "absurdly high", with trust in the HSR system damaged because many shoppers were likely to "reject any system that grants four stars to a product with so much sugar".<sup>551</sup>

### Milo and the 'as prepared' rule

Another much-criticised practice has been exploitation of the 'as prepared' rule in the HSR system. The example of popular drink powder Milo has received the most attention from food industry critics. Under the rule, Milo achieved 4.5 stars based on the assumption that it was consumed with skim milk. Critics pointed out that it was in fact consumed "in a variety of ways, including mixing it with full cream milk, eating it straight out of the can, or sprinkling it on ice cream".<sup>552</sup>

In submissions to a review of the 'as prepared' rule both the Public Health Association of Australia<sup>553</sup> and the George Institute<sup>554</sup> noted in June 2017 that ongoing negative publicity about Milo was leading the public to view the whole HSR system as a failure. They argued that this undermining of public trust required attention through a change to the rule.

In 2017 the Food and Grocery Councils in both Australia<sup>542</sup> and Zealand<sup>525</sup> were opposed to changing the 'as prepared' rule. It appears, however, that change is on the way. The Health Star Rating Advisory Committee, at its meeting in November 2017, agreed the "status quo cannot continue as a viable option due to the negative media that has developed around this issue ... [and] that 'as sold' with specific limited exemptions appears to be the most viable option".<sup>545</sup>

Early in 2018 Milo's manufacturer Nestlé removed the 4.5 star rating.<sup>552</sup>

#### *7.3.15.4 Should HSR ratings apply across food categories?*

A representative sample of 1000 Australian supermarket shoppers aged 18 and over showed substantial confusion about whether HSR ratings applied within or across food categories. Half of those surveyed agreed "the HSR makes it easier to compare products that are in different sections of the supermarket".<sup>555 p4</sup>

Some of the HSR system's strongest critics, including those calling for it to be abandoned, have found easy targets for ridicule by ignoring the fact that the HSR is designed to allow comparisons within food categories, but not between them. Yoghurt with one and half stars, for example, has been compared by critics with four stars for beer-battered chips<sup>556</sup> and two and a half stars for liquorice.<sup>557</sup>

Rather than calling for the HSR system to be abandoned, Australia's Obesity Policy Coalition has called for an "an education campaign that reinforces the HSR as a tool for comparison of foods in the same category".<sup>528 p2</sup> Nutrition Australia, on the other hand, has argued that HSR ratings "should be able to be used as an indicator of relative healthiness compared to ANY other item".<sup>538 p2</sup> The George Institute has argued that "further attempts are necessary to investigate the potential of a single HSR system that works for all products".<sup>531 p13</sup>

#### *7.3.15.5 Conclusion*

The first three issues outlined above (s7.3.15) all show the food industry on one side and public health advocates on the other, and provide further information relevant to Research Question 1 (stakeholder positions on FoPL). How these issues eventually play out may alter some of the conclusions drawn in Chapter 8 about the relative power of both parties in influencing FoPL decisions. There is, however, no consensus among public health advocates regarding whether the system should be changed to apply across food categories.

### **7.3.16 Next step: the five year review of the HSR system**

A five year review of the HSR is due to be completed by mid-2019. It is to “consider if, and how well, the objectives of the HSR system have been met, to identify options for improvements to and ongoing implementation of the system”.<sup>558</sup> A number of health and nutrition organisations made submissions to the review in 2017, including the Public Health Association of Australia,<sup>553</sup> Australia’s Obesity Policy Association,<sup>528</sup> the George Institute,<sup>531</sup> Activity and Nutrition Aotearoa,<sup>529</sup> Dietitians New Zealand<sup>532</sup> and the Australian Medical Association.<sup>530</sup> The issues described in the previous section were to the forefront in these submissions.

All submissions have been summarised in a report prepared for the Commonwealth Department of Health. In total 483 submissions were received, with 339 from the general public. The remaining submissions were from stakeholders: public health (63), consumer groups (32), industry (24), government (11) and other stakeholders (14). The submissions report is valuable for its breadth – showing the range of views on many issues – but has little depth and does not identify any individual submitters.

## ***7.4 Aspects of power influencing the Review and its outcomes***

Preceding sections of this chapter reported a large amount of information pertaining to aspects of power (agency, institutional, investment, network and ideological) that may have influenced the Review and its outcomes. Further information that did not readily fit into the chronological structure from earlier sections is reported here on power relating to the regulatory framework for developing food standards (s7.4.1), the investment power of business (s7.4.2), and the power derived from the public health policy community speaking with one voice (s7.4.3).

### **7.4.1 The regulatory framework for developing food standards**

As has been discussed throughout this thesis, underlying the Review and its outcomes has been the tension between protecting public health and government rules about reducing or restricting regulation. These rules are an important institutional

arrangement that potentially influenced the Review and its outcomes as is reported in both Chapter 6 and preceding sections of this chapter. A number of commentators and informants commented on this tension from a variety of viewpoints.

In a discussion of the power of 'Big Food' in Australia, Mayes and Kaldor (2014) contended that the aim of the Australian Food and Grocery Council (AFGC) was to 'shape a regulatory environment that increases the profitability of the food and beverage sector'. This aim was pursued, they claimed, by the AFGC 'securing a seat at the policy table and arguing food industry regulation is unnecessary or flawed'. Mayes and Kaldor argued that the AFGC was very successful, having 'a profound influence' on the way the Australian food system was regulated. This influence was aided, they continued, by the trend since the 1980s for governments on both sides of politics to favour deregulation of business as the default option.<sup>559</sup> The linkage between regulatory policy and the ideological stance of governments during the course of the Review and its outcomes is discussed in Chapter 8 (8.3.7.1).

Key informant Dr Geoffrey Annison from the AFGC put the case to the author for being careful before imposing regulation. His argument was that it was all very well to have a range of interventions for non-communicable diseases that, as a suite, might be effective. If one section of the community specifically had to bear the cost of an intervention, however, then there is a need to be more rigorous in examining the evidence supporting it.

Three informants noted that reducing or not increasing regulation was not always a key driver. Professor Greg Johnson told the author he believed that governments used the rules about regulation as an excuse to avoid taking actions that were politically difficult. Jane Martin from the Obesity Policy Coalition expressed the same view. Appeals to the Office of Best Practice Regulation, she said, were just an excuse and were not the barrier. "It's just about political will and industry power."

Review Panel member Dr Chris Reynolds also saw political will as the crucial element.

In the end the Office of Best Practice Regulation – they really are secondary to the Cabinet process. If governments want to do something, they will do it. [Federal Labor Minister Nicola] Roxon got through plain packaging nationally.... In South Australia we put through bans on plastic shopping bags – the evidence really wasn't there to do it ... [but] it was government policy, and it got through. You can override the OBPR.

#### **7.4.2 The investment power of business**

Professor Greg Johnson of the Australian Chronic Disease Prevention Alliance, when interviewed by the author, was somewhat sceptical of the influence of business investment power in the context of the Review. He noted that, in one of the project committee meetings, Jane Halton (Secretary of the Commonwealth Department of Health and Ageing and chair of the project committee), responded to the food industry by drawing parallels with tobacco industry strategies. Professor Johnson continued:

You can see the parallels, government can see the parallels, everyone can see the parallels. The industry will come along and say 'Oh, this will destroy our competitiveness, the cost of doing business will go up, there's no way we can deal with this regulation, it's over-regulation, it's going to add costs to business, it going to lose jobs, and we'll all go out of business. That's one of their strategies and there are some naïve politicians who will just think that's true. But I don't think government necessarily buys that prima facie.

#### **7.4.3 Speaking with one voice: power from policy networks**

The author questioned of a number of Australian key informants from the health sector about the importance of organisations 'speaking with one voice' during the course of the Review.

An informant who was a member of the Food Regulation Standing Committee believed that forming coalitions around FoPL policy had "probably given the public health lobby more strength" than on other issues he could think of. He saw the voice as having "a bit

more clout”, with more influence on decisions than it had in the past when “everybody was loose and disparate”.

Jane Martin from Australia’s Obesity Policy Coalition saw a unified voice as “absolutely critical”. She noted that this something learned from the Preventative Health Taskforce. “Rob Moodie, who was the chair, said you’ve got to be all on the same page.”

Dr Rosemary Stanton made the point that:

You can only have the public health people speaking with one voice if they haven’t got commercial sponsors, or at least if they’re not beholden to their commercial sponsors. In Australia we’ve tended to go with the Cancer Council because they don’t have any commercial sponsors in the food industry.

Finally, another respondent noted that, from a communication point of view, it was important that the public received consistent messages.

## **7.5 Summary**

This chapter reported influences shaping the development and implementation of the HSR system – the major FoPL outcome of the Review. It contains numerous examples of influences that appeared to reflect all five aspects of power identified in Chapter 3. Pulling this information together and attempting to identify the extent to which each of these influences affected FoPL decisions, together with lessons that might be drawn for public health when in conflict with industry, is the main task of the Discussion which follows as the next chapter.

The current chapter begins by reporting the response by Ministers to the report in December 2011 when there was still a left-leaning majority and the Council was chaired by a Commonwealth minister. The decision at that time was to reject both the traffic light system supported by public health and the Daily Intake Guide (DIG) scheme preferred by industry. Instead the Council proposed to oversee the development of a new, interpretive FoPL system (s7.2). In June 2013 – with a four to six split between left- and right-leaning Ministers, but still a Labor Commonwealth Minister as chair – what

was now called the Ministerial Forum announced that the HSR system was to be developed (s7.3.4).

By the time the Forum next met (in December 2013) its political composition had changed substantially from the times when the Review had been conducted and had reported. Left-leaning ministers had been reduced to three and a Minister from the right-leaning Coalition Government was in the chair. Nevertheless the Forum declined to agree with the new chair's wish to have the HSR system exposed to a Regulation Impact Statement.

In June 2014, now with only two left-leaning Ministers, the Forum agreed that the HSR system would be implemented (s7.3.5.6). This decision is of substantial importance for reaching an understanding aspects of power that influenced outcomes of the Review. Business agency power, expressed through lobbying of the Forum's new chair by the Australian Food and Grocery Council (AFGC), forced public health and consumer groups to make concessions about implementation details. These groups formed a tight public health policy network which was influential in keeping the HSR system alive (network power) when the AFGC was using its political influence with the new Coalition Government to try to weaken or destroy it (ideological power). Another factor at play was the history behind the fact that the Lead Ministers from a big majority of jurisdictions represented on the Forum held health portfolios (institutional power).

By June 2018 there was again a left-leaning majority on the Forum (six to four). The five year evaluation of the HSR system reports in 2019, with arguably the biggest decision whether to make the system mandatory. The political composition of the Forum when this decision is made could be crucial.

Table 7.6 provides a summary of some of the key actions taken by the Ministerial Council that led to the establishment of the Review and the Review Panel's report in February 2011 reported in Chapter 6. It also summarises key actions taken by the Ministerial Council/Forum from December 2011 that resulted in the development and implementation of the HSR system.



**Table 7.6 Key Ministerial Council/Forum decisions relating to the Review of Food Labelling**  
**Law and Policy and the development of the Health Star Rating system**

Date	Number of left-leaning Ministers					Number of right-leaning Ministers					Action by Ministerial Council/Forum
	1	2	3	4	5	6	7	8	9	10	
October 2008	Western Australia changed from left- to right-leaning in September 2008										Commissioned Review
	New Zealand changed from left- to right-leaning in Nov 2008										Agreed to Terms of Reference
May 2009											
											Endorsed front-of-pack policy statement / Dr Blewett to chair Review
October 2009											
	Victoria (November 2010) and NSW (March 2011) changed from left- to right-leaning										Responded to Review Panel's report
December 2011											
	Queensland and Northern Territory changed from left- to right leaning in 2012										Announced HSR system to be developed
June 2013											
	The Australian Federal Government changed from left- to right leaning in September 2013										Declined to require Regulatory Impact Statement
December 2013											
	Tasmania changed from left- to right leaning in March 2014										Agreed HSR system to be implemented
June 2014											
	Victoria (November 2014), Queensland (2015), Northern Territory (2016), and Western Australia and NZ (2017), changed from right-leaning to left-leaning; South Australia changed from left-leaning to right-leaning in March 2018										Noted continuing good progress with implementation
June 2018											



# Chapter 8

## Discussion

### ***8.1 Introduction***

The aim of this thesis is to explore how business interests influence public policy when in conflict with public health, using the Review of Food Labelling Law and Policy (the Review) as a case study. It addresses the conflict between the food industry (particularly food manufacturers) and public health over the role of front-of-pack nutrition labelling (FoPL). In particular, it focusses on influences shaping the main FoPL outcome of the Review, the Health Star Rating (HRS) system. A framework for doing this was developed in Chapter 4. This distinguished five ‘aspects of power’ that the literature suggested can play a role in government decision making: agency, investment, network, ideological and institutional.

Research Question 1 (stakeholder positions on FoPL) is addressed first in this chapter (s8.2). The positions on FoPL held by food industry, public health groups and governments during and after the Review are summarised. The extent to which these positions were reflected in the Review’s FoPL outcome, the Health Star Rating (HSR) system, is then discussed. The conclusion is that while both industry and public health had wins and losses in terms of the outcome, public health organisations arguably did better overall. This because of the introduction and partial implementation of an interpretive FoPL scheme (the HSR system), even though public health organisations had to make concessions they did not like in order to ensure that this happened.

Influences shaping FoPL decisions during and following the Review (Research Questions 2) are then discussed. Each of the five aspects of power is considered for its influence on FoPL decisions (s8.3.1 to s8.3.5). The conclusion (s8.3.6) is that institutional, investment and ideological power all played roles in influencing FoPL decisions. Network power, from the available evidence, appeared to have played a lesser role. The forming

of an Australian FoPL policy community involving health organisations and consumer organisation CHOICE, however, enhanced the ability of public health advocates to influence outcomes. Agency power appeared to be effective on at least two occasions, for the public health policy community through their submissions to the Review, and for the food industry through lobbying during the development and implementation of the HSR system.

Research Question 3 (what can be learned about how to ensure better health outcomes from government decision making) is answered by discussing eight implications of the case study that might assist public health advocacy, both for the continuing development of the HSR system and more generally in situations where there is conflict with industry (s8.4). The Discussion concludes with consideration of the study's strengths and limitations (s8.5). Suggestions for further research are made in the Conclusion (Chapter 9).

## ***8.2 Stakeholder positions on FoPL and their reflection in outcomes***

### **8.2.1 Introduction**

This section addresses Research Question 1: "Which food industry, public health and government positions on front-of-pack nutrition labelling (FoPL) issues were considered as part of the Review, and how were these positions reflected in Review outcomes?" Consequently it is mainly descriptive. The section concludes (s8.2.4) by drawing conclusions about the relative success of the food industry and public health in achieving the outcomes they wanted. This is relevant to Research Question 3 (lessons for public health).

Three sets of stakeholders are considered: the food industry (mainly large manufacturers), public health and consumer groups, and governments. As is shown below, there was a clear distinction between the main FoPL outcome that food manufacturers wanted (no change to the status quo with the continuance of their own voluntary, non-interpretive, Daily Intake Guide (DIG) scheme) and what public health

and consumer advocates sought ( initially a mandatory, interpretive traffic light system (TLS), and later the interpretive HSR system that they wanted to be mandatory).

## **8.2.2 Interpretive and non-interpretive FoPL systems**

Interpretive labelling, as used in this study, refers to labelling that, ‘at a glance’, indicates the healthiness of a food, or the extent to which it should fit within a healthy diet<sup>319</sup> (s6.4.1). The TLS, strongly supported in public health submissions to the Review (s6.5.4), is interpretive, with different colours used to indicate healthiness<sup>194</sup> (s5.3.3). The Daily Intake Guide scheme (DIG) generally favoured by food manufacturers (s6.5.5.1), which provides information about the proportions of different nutrients in products but says nothing about healthiness, is not<sup>201</sup> (s5.3.3).

The position of stakeholders on interpretive FoPL systems before and during the Review was very clear. Interpretive systems were supported by health and consumer organisations, governments and the Review Panel, and opposed by food manufacturers and retailers led by the AFGC.

Many health organisations were supportive of interpretive FoPL prior to the start of the Review. There was significant support from within the New Zealand health sector as far back as 2006<sup>7</sup> (s6.4.2.2). A group of ten Australian health and consumer organisations agreed on a consensus position on FoPL in February 2009, calling for a mandatory, interpretive scheme<sup>321</sup> (s6.4.2.1). The call from public health groups for interpretive FoPL was continued into the Review. The New Zealand Food Safety Authority (NZFSA), for example, identified 18 second-round submissions from New Zealand from public health groups, with these, in general, strongly supporting interpretive FoPL<sup>326</sup> (s6.5.4).

The FoPL outcome that governments were looking for through their representation on the Ministerial Council (before it was renamed the Forum) was set out in the “Front of Pack labelling Policy Statement” the Council endorsed in October 2009 (s6.4.1). The FoPL scheme the Council wanted was an interpretive one.<sup>320</sup>

The federal Labor government in power during the Review appeared very committed to the implementation of an interpretive FoPL scheme. An indication of this was the appointment in 2012 of top public servant Jane Halton, Secretary of the Commonwealth Department of Health and Ageing (DOHA), to chair the Project Committee tasked with developing an interpretive scheme (s7.3.2.1).

The National-led New Zealand government, in its second-round submission to the Review, appeared to be open to some form of interpretive system, noting that “‘high/med/low’, colour coding and other interpretive systems can be used to simplify consumer interpretation”<sup>560 p13</sup> (s7.3.6.2).

The Review Panel, in its 2011 report, recommended that “an interpretative front-of-pack labelling system be developed”.<sup>292 p13</sup> This was followed with a recommendation that this be a TLS (s6.6.1.4).

Second-round submissions to the Review (those responding to a Consultation Paper issued by the Review Panel) which referred to a TLS were identified in Study 1 (s6.5.5). All but four of the 28 such submissions from the food industry, and all four submissions from food retailers, opposed introducing some form of TLS (s6.5.5.3). These findings are consistent with the view expressed by the AFGC that “non-interpretative [*sic*] approaches – such as the DIG scheme – are better than interpretive approaches such as ‘traffic lights’”.<sup>339 p31</sup>

### **8.2.3 Voluntary and mandatory FoPL systems**

The AFGC, in its 2009 first-round submission to the Review, stated that it was not opposed to mandatory labelling, providing there was scientific evidence this would assist consumers to make the “right purchase to meet their individual needs”<sup>199 p9</sup> and did not discourage purchase. In their second-round submission the AFGC recommended that the Panel “agree that no firm science-based case has been made for mandatory food labelling for health promotion”.<sup>339 p9</sup> They invited the Panel to instead support voluntary industry schemes. The AFGC’s public position, then, was that mandatory

schemes were acceptable in principle but should be ruled out in practice because they lacked a scientific base.

Public health and consumer groups in both Australia<sup>321</sup> (s6.4.2.1) and New Zealand<sup>7</sup> (s6.4.2.2) had, prior to the Review, called for a mandatory interpretive system. This was a strong theme in second-round submissions to the Review from these groups. It was either directly implied or stated in most of those submissions coded as supporting the proposition that some form of TLS should be introduced (s6.5.5.5).

Government policies in both Australia and New Zealand in place during the Review favoured restricting the use of regulation that might increase costs for industry. Introducing new regulations, for governments, was something to be discouraged, particularly if a case could be made that industry self-regulation was a reasonable alternative (s6.3.4).

When first announced by the Ministerial Forum, in June 2013, the HSR system was to be voluntary, but with a mandatory approach to follow if, after two years, voluntary implementation was found to be unsuccessful<sup>419</sup> (s7.3.4.1). In June 2014 the Forum increased the voluntary implementation period to five years. The Forum did not repeat the threat to make the HSR system mandatory, but neither did they say they were withdrawing it<sup>453</sup> (s7.3.5.6).

An indication that public health advocates might have public opinion on their side came from a 2015 survey of 3000 Australians, nearly 80% of whom expressed apparent support for making the HSR system mandatory<sup>515</sup> (s7.3.13).

#### **8.2.4 The scorecard: the food industry versus public health**

In the period from the beginnings of the Review in 2010 until September 2018 the food industry had three wins relating to their goal that any FoPL system to be introduced should be non-interpretive and voluntary. These were the rejection of the interpretive TLS by the Ministerial Forum in 2011 (s7.2.2), the Forum's acceptance in June 2014 that the non-interpretive DIG system could continue to be used alongside Health Star Ratings

(s7.3.5.6), and the decision that the HSR system was to be implemented on a voluntary basis. Their loss was that the Forum in effect imposed the interpretive HSR system on them. It did this by threatening to introduce a mandatory scheme if industry failed to collaborate with public health groups in developing the HSR system and implementing it widely (s7.2.2 and s7.3.5.6).

Public health and consumer groups had clear two losses. A TLS was not implemented, and the HSR system was voluntary. But they attained what could be seen as the main prize, government-led implementation of an interpretive system that had their support.

The FoPL arrangements that emerged following the Review were better from a public health perspective than those before it commenced. There was now an interpretive system in place where there had not been before. Correspondingly, from the point of view of the AFGC and the generally large manufacturers that it represented, the position was worse as a result of the Review because they were under increasing pressure to put a HSR on products whether they wished to or not.

Nevertheless, from a public health perspective the position will remain, for some years at least, that FoPL will not be as good as it could be. This applies particularly to the speed with which HSRs are implemented on all products. Delays in implementation could be costly, representing a lost opportunity to reduce the burden of obesity and non-communicable diseases. From this perspective, many public health advocates might be reluctant to call this a win for public health.

There is a second reason why public health advocates might not see the HSR system as a win for themselves, or as a loss for the food industry. From about 2008 in Australia (s6.4.2.1), and perhaps slightly later in New Zealand, public health advocates put a huge effort into achieving an interpretive FoPL system. But interpretive food labelling would rate, in the opinion of probably most public health advocates, as a less important food-related intervention than some others. In 2015, for example, a New Zealand panel of 52 public health experts rated implementation of the HSR system fifth in importance as a government intervention: behind improving food composition, restricting the marketing



of unhealthy food to children, keeping schools and pre-schools free of commercial promotion of unhealthy foods, and ensuring that schools and pre-schools provide only healthy food for children.<sup>8</sup> Time and resources that could have been spent on providing research evidence on and advocating for these other interventions were instead used on FoPL, and will continue to be used at least until the outcomes of the five year review of the HSR system reporting in 2019 are resolved. Given that, as is suggested below (s8.3.2.4), food manufacturers could probably live with interpretive FoPL more easily than with some other interventions wanted by public health advocates, they may well be quite happy with the outcome.

### ***8.3 Influences on government FoPL decisions arising from the Review***

This section addresses Research Question 2 (influences shaping FoPL decisions) by first discussing the extent to which each of the five aspects of power appears to account for government decisions relating to FoPL, and to a less extent by the Review Panel (s8.3.1 to s8.3.5). The apparent contributions of each aspect to key decisions during and after the Review are then assessed (s8.3.6), followed by a discussion of the relative power of each aspect overall (s8.3.7).

#### **8.3.1 Agency power and FoPL decisions during and after the Review**

##### ***8.3.1.1 Introduction***

Major industry groups have the ability to mount well-funded campaigns to oppose government interventions to improve population health that might affect their profitability. As Chapter 5 shows, business groups have engaged in a wide range of practices – from the reasonable to, and sometimes beyond, the borders of the ethical – in attempts to defeat proposals backed by public health groups. The purpose of this section is to explore the role of business practices in influencing government decisions about FoPL during the Review and subsequent development of the HSR system. It thus contributes to answering Research Question 2 (influences shaping FoPL decisions).

The business practices discussed here are considered, in terms of the framework developed in Chapter 4, as attempts to exercise agency power. This is defined as the ability of any group or person to influence government decisions in their favour through deliberate, intentional actions. The practices discussed below are among those identified in Chapter 5 literature as having been used by industries with products under challenge from public health advocates.

While the focus is on business practices, in some cases comparisons are made with equivalent practices that were engaged in by public health organisations. This is useful information for coming to an assessment of the relative agency power of the food industry and public health advocates during and after the Review.

The business practices discussed here line up closely with five practices in the “information and messaging” industry strategy identified by Mialon and colleagues.<sup>12</sup> These generally relied on publicly-available information. The practices Mialon and colleagues identified were “Lobbying”, “Stress the economic importance of the industry”, “Promote de-regulation”, “Frame the debate on diet- and public health-related issues” and “Shape the evidence base on diet and public health-related issues”.<sup>12</sup>

Table 1 All five were found during the case study and are reported in Chapter 6 and 7. All are among the business practices discussed in this section except for stressing the economic importance of the industry, which is considered in section 8.3.2.

#### *8.3.1.2 Direct representations to governments or government agencies (lobbying)*

Making submissions and lobbying were the two forms of direct representation for which evidence was found in this study. Both public health organisations and the food industry (particularly the AFGC) put substantial effort into submissions to the Review (s6.5.1, s6.5.4, s6.5.5). Public health groups appeared to have done better on FoPL from the battle of the submissions in influencing the Review Panel (s6.6).

Information provided by key informants suggested there was little, if any, significant lobbying of the Review Panel outside its formal consultation and submission process (s6.7.1). This changed, however, once the Panel’s recommendations were known. The

AFGC, in response to the recommendation to introduce a TLS, undertook a lobbying campaign opposing this<sup>369</sup> (s6.6.2.1).

The Ministerial Forum (comprising Australian Federal, State and Territory ministers and one New Zealand minister) decided, in 2011, to reject traffic light labelling<sup>322</sup> (s7.2). There is thus a prima facie case that the AFGC's lobbying to defeat traffic lights was effective.

The clearest demonstration of successful lobbying by the AFGC occurred with the pulling down of the HSR system website in February 2014. There is strong circumstantial evidence that this resulted directly from a phone call made by the AFGC Chief Executive to the office of the Forum's chair, Assistant Health Minister Fiona Nash (s7.3.5.5).

Public health supporters of a TLS from both Australia and New Zealand consistently stressed how they lacked the resources to go close to matching the lobbying capacity of the food industry over the course of the Review (s6.7.1).

#### *8.3.1.3 Attempting to reduce the likelihood of regulation*

Avoiding regulation was arguably the main objective of the AFGC in engaging in the Review and subsequent developments. Three business practices were identified in Chapter 5 (s5.3) as sometimes used in support of this objective: direct promotion of self-regulation, pre-empting regulation through introducing alternative schemes, and diverting attention from issues that might prompt governments to regulate. Each is considered below with respect to FoPL issues during and following the Review.

The promotion of self-regulation by the food industry was a marked feature of second-round submissions to the Review. Of the 32 submissions from the food manufacturing sector, 19 (59%) supported self-regulation, as did all four submissions from advertisers (Study 2, Table 6.9). There was, on the other hand, strong opposition to self-regulation in submissions from the health and consumer sectors (s6.5.6.2).

The case was made in Chapter 5 that the Daily Intake Guide (DIG) FoPL scheme was introduced by the AFGC in 2006 to pre-empt the introduction of government-mandated

FoPL systems such as traffic light labelling (s5.3.3). The AFGC vigorously promoted the DIG scheme both during and after the Review (s6.6.2.1, s6.7.2). Because of the success of the DIG scheme, the AFGC argument went, Australia already had a suitable FoPL system, indeed one that was superior to a TLS. This was not, however, accepted by the Review Panel, who considered the DIG scheme unsuitable because it was non-interpretive<sup>292</sup> (s6.6.1.4). In 2014 the Ministerial Forum, following lobbying from the AFGC, announced that the DIG scheme could continue to be used together with the HSR labels<sup>453</sup> (s7.3.5.6). While this was a win for the AFGC, the strategy of avoiding introduction of an interpretive system because the DIG scheme already provided an effective FoPL option did not succeed.

Diverting attention away from their products was identified in Chapter 5 as a practice adopted by businesses with products under threat from public health. In the case of the food industry, one manifestation is diverting attention to physical activity. References to physical activity in relation to health were more prevalent in second-round submissions from food manufacturers than from other groups of submitters: 25% of the 32 submissions from food manufacturers made this reference compared to 4% of the remaining 419 submissions (s6.5.6.3).

#### *8.3.1.4 Framing of issues relating to public health*

Food manufacturers with products under threat because of concerns about their impact on public health have a history of framing issues to shift attention from their products to those who purchase and consume them (s5.4).

Second-round submissions to the Review were examined in Study 2 for ways in which industry was known to frame issues when in conflict with public health (s6.5.6). There was little to no use in submissions of the frames identified as commonly used elsewhere by industry in defence of products under threat because of public health concerns (s5.4). Five submissions of the 541, three of which were from food manufacturers and a fourth from a neoliberal think tank, argued that individuals were responsible for healthy food choices. There was no evidence for industry use of three more frames – emphasising

freedom of choice in food selection, referring to the ‘nanny state’, and describing opponents in ways that might undermine their credibility such as use of terms such as ‘food police’ (s6.5.6). This is a quite different result from what has been found elsewhere. Freedom of choice arguments have been commonly made, for example, by business interests opposed to tobacco control in the United States,<sup>228</sup> the introduction of legislation in New Zealand to combat non-communicable diseases,<sup>3</sup> and measures proposed in Australia to reduce these diseases.<sup>12</sup>

The personal responsibility, freedom of choice and ‘nanny state’ frames all share an underlying theme. Individuals are responsible for making healthy choices from among the range of products provided by industry to meet consumer demand, and the state should not interfere with their freedom to do so.<sup>227</sup> It is suggested here that this theme makes sense for industry on issues such as restrictions on advertising unhealthy products. It makes less sense, however, in relation to FoPL. It is difficult to argue that individuals are responsible for making healthy food choices while avoiding the conclusion that industry has a role in assisting them to do so. It is suggested, then, that low use by food manufacturers in submissions of frames relating to freedom of choice and personal responsibility is because of their low applicability to FoPL. Food labelling differs from some other interventions in that it is about assisting consumer choice, making personal responsibility, freedom of choice or ‘nanny state’ arguments of little value for industry in this context.

The final ‘frame’ for which evidence was considered is the claim that no foods are ‘good’ or ‘bad’, or that all foods have a place in a healthy or balanced diet. Strictly this is not a frame in that it probably does not activate important values for most people.<sup>218</sup> However it shares, with the other frames considered, an attempt to move opinions and attitudes away from public health perspectives through use of language. Variations on this frame appeared in 11 second-round submissions from food manufacturers or retailers, but in none of the remaining 440 submissions (s6.5.6.8).

#### *8.3.1.5 The misuse of science by the AFGC*

There is a large literature on the misuse of science and scientific findings by business interests (and particularly the tobacco industry) in attempts to influence government policy<sup>176, 235, 240, 250, 251, 273</sup> (s5.5.7). This study did not attempt to systematically search for such examples used in attempts to influence FoPL decisions. Evidence did emerge, however, of one tactic, the commissioning of reviews by friendly consultants. As part of its campaign to defeat the TLS recommendation made by the Review Panel, the AFGC commissioned an “analysis of the peer-reviewed scientific literature on front of pack labelling ... to ensure industry’s case supports the Daily Intake Guide over Traffic Light labelling”.<sup>369</sup> The AFGC gave this task to a person who appeared to have worked as a consultant only on AFGC projects, yet was described as ‘independent’. It grossly exaggerated the consultant’s credentials on several occasions (s6.7.4). This in no way reflects on the quality of the consultant’s work, but it paints a poor picture of the AFGC’s commitment to scientific norms, given it was prepared to commission research for which it had already decided what the outcome should be.

#### *8.3.1.6 Conclusions*

This section considered business practices used by the food industry (in most cases food manufacturers, led by the AFGC) during and following the Review with the intention of influencing FoPL outcomes.

Evidence was found of two types of direct representation: submissions and lobbying. The food industry appeared to have little influence through its submissions on the Review Panel’s FoPL recommendations. Their lobbying of governments, however, probably was helpful to them at several stages during the Review and its aftermath, particularly following the election of the right-leaning Abbott Government in Australia in 2013 when a phone call to the office of the Forum’s chair may have resulted in the no apparent long-term gain.

Industry lobbying on governments to reject a TLS may have had some effect. The food industry claimed that there was insufficient evidence to introduce traffic light labelling,

and the Australian Government used this as a reason for rejecting it (s6.6.2.5). Whether lack of evidence was the main reason is unclear, particularly given that there was a body of evidence that was sufficient to persuade the Review Panel to recommend the introduction of a TLS, while the HSR system was later introduced with little or no research evidence behind it. The decision to reject a TLS is thus open to alternative explanations, and food industry lobbying may have contributed. But even if industry had a significant influence through its lobbying on the TLS decision, this could yet prove a pyrrhic victory. The HSR system, if widely implemented, will still inform consumers with what many manufacturers do not want, a message on food labels that some of their products are not healthy.

Food manufacturers, led by the AFGC, undertook a number of activities that have been interpreted in this study as attempts to reduce the likelihood of FoPL being further regulated: promoting self-regulation, introducing the Daily Intake Guide (DIG) scheme in an attempt to forestall interpretive labelling being imposed, and diverting attention from food to physical activity. They had a mix of wins and losses. Existence of the DIG scheme failed to prevent the adoption of the HSR system which, while introduced on a voluntary basis, was interpretive and could still become mandatory in the future.

There was little use by food manufacturers of frames relating to personal responsibility and freedom of choice that have been used elsewhere by industries when opposed by public health advocacy. This was attributed to the lack of relevance of these frames to FoPL. There was, however, substantial use of statements claiming that all foods had a place in a healthy diet. The thinking behind this statement, which in effect challenges interpretive labelling, was not successful in persuading either the Review Panel or the Ministerial Forum to change course.

The AFGC was found to have commissioned a literature review by a friendly consultant, a common misuse of science by industries under threat from public health initiatives. No evidence was found that this had any effect on FoPL outcomes. Finally, the AFGC, on several occasions, misrepresented information about traffic light labelling in the media.

To conclude, evidence was found for some of the business practices identified in Chapter 5 as used by industries with products threatened by public health initiatives, but in general these do not appear to have had much influence on Review outcomes. For the food industry, agency power may have contributed to the rejection of a TLS by first the Australian Government and then the Forum, and to the decision that the new system to be developed would be voluntary. It was, however, not sufficient to reverse the Forum's commitment to interpretive labelling.

Based on the available evidence from this study, business practices appeared to play only a limited role in influencing FoPL decisions during and after the Review. As was pointed out in Chapter 5, however, there are many ways, often hard to discover, in which other business practices not considered here could have influenced Review outcomes. It is possible that some of these other business practices had a major effect. This is discussed further when considering the limitations of this study (8.5.2) and implications for further research (s9.3). Nevertheless, it appears unlikely that business agency power provides the primary explanation for FoPL decisions made during and following the Review. The four contextual aspects of power identified in Chapter 4 are examined in the following sections to see whether they can do better.

### **8.3.2 Investment power and FoPL decisions during and after the Review**

#### *8.3.2.1 Introduction*

Food manufacturing makes a large contribution to the Australia and New Zealand economies. This section considers an issue which is hard to untangle: how and to what extent might this have mattered for decisions arising from the Review.

Investment power was defined in Chapter 4 as the ability of business entities to have government decisions influenced in their favour because of the importance to the economy of their investment decisions. It is a form of contextual power: part of the context in which government decisions are made (s4.5).



Because of the nature of investment power as described in Chapter 4, however, politicians need not consciously be thinking of the consequences for business investment in making pro-business decisions. They may instead, for example, be acting from a general ideological position, influenced by neoliberal arguments, that leads to a focus on the ‘regulatory burden’ on industry rather than the ‘industry burden’ on public health (s8.4.2).

#### *8.3.2.2 Direct statements about the investment power of food manufacturers*

The AFGC began all three of its major documents relating to the Review with a description of the importance of food manufacturing to the Australian economy.<sup>199, 339, 370</sup> In a first-round submission to the Review, for example, the AFGC noted that it represented Australia’s largest manufacturing sector, and that ‘by any measure’ its members were “substantial contributors to the economic and social welfare of all Australians”.<sup>199 p2</sup> The New Zealand Food and Grocery Council also referred to the economic importance of the food industry in its second-round submission.<sup>561</sup> This is consistent with the results of a study of corporate political activities across the Australian food industry. All five major food industry players in the study, including the AFGC, were found to have highlighted their economic importance in their messaging.<sup>12</sup>

#### *8.3.2.3 Investment power and the regulatory environment*

Government regulatory policies in both Australia and New Zealand have, as one of their objectives, the encouragement of business investment through reducing regulatory demands on industry (s6.3.4). It is therefore possible that investment power played a significant role in shaping the regulatory environment in both countries, although the author found no direct evidence for this. An alternative argument is that the main reason governments favour a low level of regulation is to lower business costs which would be passed on to consumers. The counter-argument is that without regulation the costs end up with consumers anyway in the form of risks to their health.

To the extent that investment power contributed to regulatory policies favouring business interests, it would have contributed to the regulatory policy environment that influenced Review outcomes.

It has already been noted that the Review Panel regarded the regulatory environment as working against improving population health by setting too high an evidential bar for the regulation of FoPL. The Panel argued that given the multitude of factors influencing consumer behaviour, and the time lag between the start of an intervention and a measurable effect on population health, such evidence could be too difficult to obtain, to the detriment of health<sup>292</sup> (s6.6.1.3). To the extent that investment power contributed to this regulatory environment it thus helped the food industry in fending off a mandatory TLS.

#### *8.3.2.4 Potential limitations on investment power influencing FoPL decisions*

Outside its possible influence on regulatory policy, investment power may have had a quite limited influence on FoPL decisions during and following the Review. This is despite the economic importance of Australian and New Zealand food manufacturers.

Interpretive FoPL is not necessarily as threatening to food manufacturers and retailers as, say, the threat to coal-fired power stations from regulations aimed at reducing CO2 emissions. People will still consume some processed foods, but coal-fired power stations can be put out of business by natural gas or renewable energy. Interpretive FoPL is not likely to result in a significant reduction in total food consumption, but rather (public health advocates hope) to a change in consumption patterns that could well include a reduction in the consumption of highly processed foods.

There are, in the case of interpretive FoPL, at least two different outcomes that could affect the power behind the threat of businesses to reduce investment. One would be if the overall consumption of processed foods remained the same, but there was a shift away from energy-dense and nutrient-poor foods. In this case it would appear that politicians need not be overly concerned. Those manufacturers who could adjust production by reformulating products would not be significantly affected. Those who

could not adjust might go out of business, but this would create compensating opportunities for other manufacturers with little net aggregate economic impact. There is little apparent effect this would have on food retailers.

A second outcome would be that interpretive FoPL was sufficiently effective, from a health standpoint, that it significantly shifted consumption over time from highly processed foods (potato crisps, for example) to less- or non-processed foods (potatoes). This could reduce food processing jobs while making little difference to primary producers. If supermarkets continued to sell both processed and non-processed foods any effect would presumably depend on whether one category had higher profit margins than the other. If there was a significant reduction in food processing opportunities as a result of FoPL, food manufacturers might consider relocating to what they saw as a more favourable investment environment. There would be little point in trans-Tasman or inter-state relocation as they would remain subjected to the same effect from FoPL. If they moved elsewhere – to Asia for example – they would have to find new suppliers and new markets.

Considerations such as these may have reduced any concerns about industry investment power in the minds of members of the Ministerial Forum. Nevertheless, change in consumption patterns could potentially have political consequences. A move away from butter as a result of a lower HSR than margarine, for example, would not be welcomed by dairy farmers. Generally though, it seems likely that any changes in consumption resulting from FoPL would be gradual, leaving time for primary producers and manufacturers to adjust.

Investment power depends on politicians taking seriously the threat that regulation or other measures disliked by business may constrain or diminish investment that they see as assisting the economy. As pointed out by Hacker and Pierson (2008), investment power is thus variable, and dependent to a degree on the extent to which capital is mobile. Further, they noted that business interests are not monolithic, and some policies can benefit some businesses while harming others.<sup>141</sup> In the case of FoPL decisions in Australia and New Zealand, as has been argued above, capital mobility for food

manufacturers appears to be limited. And the food industry is not monolithic. Food manufacturers can have quite different, and sometimes opposing, interests to primary producers.

#### *8.3.2.5 Conclusion*

Some of the theorists discussed in Chapter 3, including Lindblom<sup>63</sup> and Block,<sup>89</sup> made a good case that the importance of investment decisions to the economy, and particularly on employment, could exert a powerful influence on political decision makers to favour industry interests. It is not clear, however, whether the situation in the United States, about which they wrote, is similar in Australia and New Zealand. Further, the role of investment power in influencing political decisions during and following the Review is not easy to tease out.

Investment power can emerge in two forms. Businesses may directly bring to the attention of policy makers the economic consequences, such as job losses, of particular government decisions in a way that influences these decisions in their favour. No evidence was found that this occurred in relation to FoPL either during or after the Review, although this does not mean it did not have some influence. The other form of investment power is indirect. It can, and probably did to some extent, influence institutional arrangements including the joint food regulation arrangements between Australia and New Zealand and the regulatory environment in both countries. Investment power, to the extent it influenced the regulatory environment, appears to have contributed to the Panel's decision not to recommend a mandatory TLS (s6.6.1.3). It is, however, not easy to trace through any such effect on institutional arrangements.

It can also be difficult to disentangle investment power from ideological power. A feature of neoliberalism is a concern with improving the investment environment for business. Politicians may make pro-business decisions because they share a world view that what is good for business is good for everyone.

It was argued above (s8.3.2.4) that the processed food industry would appear to have limited investment power to influence political decisions relating to FoPL if policy

makers were not unduly concerned that the industry had feasible options that would significantly decrease overall economic activity. Other than a possible influence on the regulatory policy environment, then, there is little reason see investment power as an important influence in relation to government decisions relating to FoPL.

### **8.3.3 Network power and FoPL decisions during and after the Review**

#### *8.3.3.1 Introduction*

Networks were a significant feature of the Review and the subsequent development of the HSR system. In one sense the Review can be regarded a battleground fought over by two competing networked groups – the AFGC and its members (mainly food manufacturers), and public health and consumer organisations.

This section considers the influence of network power, defined in Chapter 4 as the ability of actors to have government decisions influenced in their favour through their membership of networks. Three forms of network that relate to political decision making were identified in Chapter 4: policy communities, governance networks and elite networks. Each of these is considered below for evidence of influence on FoPL decisions during and after the Review.

#### *8.3.3.2 Policy communities*

Policy communities were defined in Chapter 4 as networks in which a relatively small group of actors shared a policy agenda and had useful resources, but were dependent on cooperation with others to achieve their aims<sup>109</sup> (s3.9.1.3).

There is strong evidence for an effective policy community among Australian health and consumer organisations that were seeking the introduction of a single, interpretive FoPL system. The emergence of this policy community was signalled by a meeting in Sydney in 2009 to develop an agreed position on FoPL. While most attendees favoured a TLS as the preferred FoPL option, this was left out of the agreed position to achieve consensus (s6.4.2.1).

Evidence of the common positions came from an analysis of second-round submissions to the Review. Not one health or consumer organisation supported the food industry's non-interpretive Daily Intake Guide scheme, while many advocated introduction of some form of interpretive traffic light labelling (s6.5.5).

The Australian public health policy community showed its unity again following the Ministerial Forum's decision to develop a new interpretive FoPL scheme. In 2012, just before the first meeting of the Australian Project Committee established by the Forum to manage the development process, health organisations and the consumer organisation Choice came together to issue a joint statement calling for the new scheme to be 'clear, simple and interpretive'.<sup>562</sup> All health organisations with members on the Project Committee were part of this group (s7.3.2.3).

Further evidence of the community's tightness in agreeing a joint approach came in June 2014, following the Forum's announcement that the HSR system would proceed, although with some concessions to the food industry. A number of Australian organisations that had supported mandatory traffic light labelling in their second-round submissions praised the Forum's decisions, and none chose to publicly regret that the HSRs were, for five years at least, to be voluntary (s7.3.5.7).

Michael Moore, a key player within the public health policy community, indicated that having a "guiding coalition" with a vision for change had been important throughout and after the Review.<sup>563</sup> A number of key informants believed that the public health case had been strengthened throughout the Review process and development of the HSR system by being able to speak with one voice (s7.4.3).

The food industry as a whole was at the other end of the spectrum in terms of unity. As an example, more than half (18 of 32) of the second-round submissions from food manufacturers, and half (4 of 8) from food retailers, expressed opposition to the introduction of traffic light labelling, with none supporting this. But only one of 38 food producers expressed opposition and one expressed support (s6.5.5.5).

While there was generally a unified approach adopted by the AFGC and its members in submissions to the Review, this did not always continue during the development of the HSR system. Even food manufacturers within the AFGC appeared at times to have been divided regarding the HSR system, with a report of a split between some cereal manufacturers who did not want it and some confectionery manufacturers to whom the HSR system did not apply<sup>430</sup> (s7.3.4.4). On the whole, however, no evidence was found of widespread or publicly-expressed disagreement from AFGC members about the organisation's position on FoPL issues throughout the Review and subsequent development of the HSR system. Resolving disagreements within the group and presenting a common face to policy makers is part of what makes a policy community effective. The AFGC and its members thus generally behaved as a policy community with respect to both the traffic light and HSR systems.

The Advocacy Policy Framework (s3.9.1.5) provides a useful description of one of the paths to policy change that can result when there are competing policy communities or 'advocacy coalitions'. Change can result because of a 'hurting stalemate' which give both parties the incentive to negotiate seriously.<sup>111, 113</sup> The climate created by the Forum's decision in 2012 to establish a collaborative process to develop an interpretive FoPL system provided a strong incentive for both parties to participate. The public health policy community recognised that this provided the only opportunity open at the time to realise its goal of a single, interpretive scheme. In turn parts of the food industry, particularly food manufacturers, would have been incentivised by some of the language in the Forum's response to the Review Panel's recommendations (s7.2.1). They would have recognised that failure to participate seriously would put them at risk of having a system in which they had little say imposed on them.

There were thus two closely knit policy communities – the AFGC and its members (particularly manufacturers), and public health groups – competing for the attention of policy makers on FoPL issues. The public health policy community was probably generally better placed to influence Review decisions because of its closer affinity with the health focus of the Forum and FRSC. As an example, five of the nine stakeholder

representatives on the Project Committee responsible for developing the HSR system were from the public health policy community. The four industry representatives, on the other hand, represented differing perspectives on FoPL in the food industry (s7.3.2.1).

If public health and consumer organisations had not formed themselves into a policy community they could have been substantially disadvantaged when competing with the already-formed and well-resourced policy community led by the AFGC. As pointed out by a key informant, as a policy community public health advocates were more likely than disparate voices to be able to lobby effectively (s6.7.1).

#### *8.3.3.3 Governance networks*

Governance power was defined in Chapter 4 as a form of network power accruing to non-government actors who had a formal role in developing public policy, or administering or delivering public services.

Both the food industry and public health had a formal role in the Australian development process for the HSR system. Governance, as at March 2018, was in the hands of three bodies – the Ministerial Forum, the Front-of-Pack labelling Steering Committee composed of senior government officials, and the Health Star Rating Advisory Committee (HSRAC).<sup>474</sup> Public health appeared to have stronger representation on HSRAC than did the food industry (s7.3.7). As well, the Ministerial Council/Forum, the highest level of governance for the HSRs, consistently sought an effective interpretive FoPL system (Chapter 7, Table 7.6).

The inclusion of Australian public health advocacy organisations in governance arrangements was arguably a step forward from the situation pertaining in the first decade of the twenty-first century. Phillips (2006) found evidence that the right-leaning Howard Government was unsympathetic to giving such organisations a role in governance.<sup>151</sup> Maddison and Denniss (2005) raised similar concerns following a survey asking Australian advocacy groups about the relationship with governments. They contended that the exclusion of advocacy groups from a role in the policy making process was associated with the Howard Government's embrace of neoliberal 'public



choice theory'.<sup>152</sup> Their survey was repeated in New Zealand with when the right-leaning Key Government was in power, with similar results<sup>4</sup> (s3.10.3.1).

#### *8.3.3.4 Elite networks*

Two types of elite network relevant to this thesis were distinguished in Chapter 4: social elites of which senior business people were members (s4.4.3.7) and business elites (s4.4.3.9).

The literature reviewed for Chapter 4 suggested that there was little or no evidence in Australia for a single social elite where senior business executives were educated with, and regularly socialised with, senior politicians.<sup>154</sup> The same held for evidence for a single business elite in either Australia<sup>154</sup> or New Zealand.<sup>161</sup> There was, however, some evidence of networking based on business connections between industry and government. In 2014 Alistair Furnival, the chief of staff for the Australian Assistant Minister of Health and chair of the Ministerial Forum, was identified in the media as having previously worked as a lobbyist for a number of manufacturers of less healthy foods. Mr Furnival resigned following these revelations. The AFGC's Chief Executive revealed that he had been in regular contact with the Minister's office prior to Mr Furnival's resignation. It also appeared, from evidence relating to the pulling down of the Health Star Rating website in February 2014, that the AFGC was receiving a very good hearing during this contact (s7.3.5.5).

Mr Furnival's move from the food industry to a politician's office was a manifestation of what has been called the 'revolving door' between business and politics (s4.4.3.8). As another example, the AFGC's Chief Executive as at February 2015 once worked in the office of conservative Australian Prime Minister John Howard.<sup>450</sup> In New Zealand the Chief Executive of the Food and Grocery Council (NZFGC) during and following the Review was a former Member of Parliament representing New Zealand's conservative National Party.<sup>452</sup> Business organisations do not appoint politically well-connected persons to leadership roles in advocacy organisations such as the AFGC and NZFGC

without good reason. It is suggested that this ‘revolving door’ probably increased the network power of both the NZFGC and AFGC during and following the Review.

#### *8.3.3.5 Conclusion*

While both public health organisations and the AFGC and its members formed policy communities around FoPL during and after the Review, this was probably more beneficial for public health in enabling effective lobbying. Governance arrangements relating to the HSR system appeared to favour public health, another source of network power. Networks resulting from the ‘revolving door’ between business and government, however, gave the food industry a form of network power not available to public health groups. On balance, public health advocates appeared to do better than the AFGC and food manufacturers as a result of network power.

### **8.3.4 Ideological power and FoPL decisions during and after the Review**

#### *8.3.4.1 Introduction*

Policy communities are in a strong position when the ideological stance of governments favours their interests. They have ideological power to the extent that government decisions are influenced in their favour because of the relative dominance of an ideology (s4.4.4). This section considers the extent to which the ideological tendencies of Australian and New Zealand governments influenced the ability of the AFGC-based and public health policy communities to achieve the FoPL outcomes they wanted during and following the Review.

Recent Australian and New Zealand governments cannot easily be fitted into single ideological categories such as neoliberalism or social democracy (s4.4.4.5). Rather, they have exhibited a mix of both neoliberal and social democratic tendencies. Some (such as the Labor Government in Australia led by Julia Gillard) were more social democratic and less neoliberal than others (such as the National-led Governments in New Zealand under Prime Minister John Key). But none could be clearly be described in terms of their policies, as a whole, as either social democratic or neoliberal.

Differences on the ideological spectrum from social democratic to neoliberal are first discussed in relation to positions taken on the regulation of industry. The effect of the election, in September 2013, of the conservative Coalition Government Australia is then discussed, followed by the effects of the balance in political affiliation of Lead Ministers on the Ministerial Forum at various stages of the Review (see Table 7.6). It is argued that the timing of changes in the balance was crucial for overall Review outcomes.

#### *8.3.4.2 The ideological stance of the NZ Key Government and FoPL decisions*

A central issue relating to FoPL that clearly divides neoliberals from social democrats is that of regulation. Neoliberal theorists generally oppose government regulation of industry, believing that the best regulator of business activity is the market. Social democrats, on the other hand, are more likely to believe that the market does not always deliver socially desirable outcomes, and that in such circumstances more may be required than industry self-regulation. This social democratic perspective contrasts with the neoliberal view that it is consumers and not governments who should decide what is socially desirable, and that industry self-regulation in response to consumer concerns is all that is required (s4.4.4.5).

The New Zealand Government<sup>5</sup> adopted a substantially more neoliberal stance than the consensus view of Australian governments<sup>310</sup> when it came to the self-regulation of FoPL by the food industry. This is not surprising: New Zealand's policy position on regulation showed more neoliberal influences than the Australian consensus. From the time the Review was announced in 2009 through to its conclusion in 2011, New Zealand's National-led Government was much more concerned with reducing the 'regulatory burden' on the food industry than with taking the opportunity to use FoPL to improve public health (s6.4.6, s8.3.5.2). The Minister for Food Safety, in her covering letter to New Zealand's second-round submission to the Review, took the neoliberal path in noting that the "benefit of voluntary labelling is that it is responsive to market demand [and] associated with reduced costs compared to regulatory interventions".<sup>564</sup> Then, in responding to the Review Panel's FoPL recommendations, the New Zealand Government opted to leave any FoPL initiatives to the food industry. This was after

consulting with the industry but not public health (s6.5.3), and preferring advice from the Ministry of Agriculture and Forestry to that from the Ministry of Health (s6.6.2.4).

The pro-business leaning of the New Zealand Government emerged again when it established a FoPL advisory group substantially biased towards the food industry (s7.3.3). There was roughly equal industry and public health representation on the equivalent Australian groups (s7.3.2).

The picture painted above is that the New Zealand Government responded to FoPL issues from the Review from a largely neoliberal perspective. However, once the Ministerial Forum agreed, late in 2011, to pursue a voluntary interpretive FoPL scheme for Australia, New Zealand to some extent followed by setting up an advisory group to look at such a scheme. There is no evidence, however, that this came about because of a move away from neoliberal values. Rather, the reasons appear to have been pragmatic. Doing nothing posed a commercial risk in that New Zealand exporters to Australia might need to adopt an Australian FoPL scheme. As well, officials had argued that it also risked leaving the Government being seen as not concerned about addressing diet-related disease (s7.3.3.1).

The ideological stance of New Zealand's National-led Government during and following the Review had other implications for public health beyond those for FoPL. The significantly greater willingness of Australian than New Zealand key informants from NGOs to consent to being named in this study's report (s6.2) could well be the result of funding constraints put on New Zealand health NGOs following the election of the National-led Government. NGOs, it is suggested, were very reluctant to be seen as political advocates for fear of having their funding cut. This fear was well justified as a 2013 New Zealand study attests.<sup>4</sup>

#### *8.3.4.3 The ideological stance of Australia's Abbott Government and FoPL decisions*

This section considers whether the replacement of the federal Labor Government by the conservative Coalition Government in September 2013 influenced FoPL decisions as a result of ideological change.

The AFGC clearly regarded a change in government as in its interest, while some public health advocates were fearful that a Coalition Government would be unsympathetic to public health initiatives around food labelling. Both stakeholder groups saw a change in government as bringing a policy shift towards a more neoliberal ideological position that might influence FoPL decisions (s7.3.5.1).

There is substantial evidence that both stakeholder groups correctly anticipated a policy shift that followed the 2013 election. One indicator was an expansion of the attempt by Forum's new chair (federal Assistant Minister of Health Senator Fiona Nash) to subject the HSR system to a Regulation Impact Statement (s7.3.5.2). Another was the pulling down of the HSR website by Senator Nash in February 2014, almost certainly in response to AFGC lobbying (s7.3.5.5). In both cases, however, these initiatives by the Senator were rejected by the Forum when it met in June 2014 (s7.3.5.6).

#### *8.3.4.4 Effects of changes to the balance of political affiliations on the Forum*

The timing of the shifting balance between the predominance of left-leaning or right-leaning Lead Ministers on the Ministerial Council/Forum appears to have been important for the Review and its FoPL outcomes. This balance was tracked from October 2008 to June 2018 in an attempt to see what effects it might have had on Forum decisions relating to FoPL (Table 7.6). The ten Lead Ministers were the Forum members who had a Forum vote on behalf of their jurisdictions. Lead Ministers from jurisdictions with a Labor (Australia) or Labour (New Zealand) government are termed 'left-leaning' in this thesis. These Ministers are assumed, *prima facie*, to be nearer the social democratic end of the spectrum occupied by Australasian governments. Lead Ministers from other governments, including the National-led government in New Zealand under John Key, the Coalition Government in Australia led by Tony Abbott and then Malcolm Turnbull, and State and Territory jurisdictions with governments formed from various mixes of Liberal and National Party representatives, are described as 'right-leaning'. These Ministers are assumed to be nearer the neoliberal end of the spectrum.

There were dramatic changes to the balance of political affiliations on the Ministerial Council/Forum over the period this was tracked (Table 7.6). The Ministerial Council that commissioned the Review in October 2008 had nine left-leaning Lead Ministers to one from a right-leaning jurisdiction. This balance had moved slightly (eight to two) when the Council endorsed the “Front of Pack Policy Statement” and endorsed Dr Neal Blewett to chair the Review in October 2009. The shift to the right continued with left-leaning Lead Ministers down to six when the Forum responded to the Review Panel’s report in December 2011. By June 2013, when the Forum announced that the HSR was to be developed, representation had moved again, with left-leaning Ministers down to four. In December 2013, when the Forum declined to support Senator Nash’s proposal for a Regulation Impact Statement, only three-left leaning Lead Ministers remained. The balance had swung even more to the right by June 2014 when the Forum agreed that the HSR system be implemented, with eight right-leaning Lead Ministers. It then started moving leftward again as the Forum continued to monitor the implementation process. Six of ten Lead Ministers were left-leaning in June 2018.

Over the ten years that Council/Forum membership was tracked the body maintained the momentum to implement an interpretive FoPL system against opposition from food manufacturers led by the AFGC. It is noteworthy that even in December 2013, when seven Lead Ministers were from right-leaning jurisdictions, the Forum did not support its right-leaning chair (Senator Nash) over a proposal backed by the AFGC for the HSR system to be subject to a Regulatory Impact Statement (s7.3.5.4).

In June 2014, with a big majority of Lead Ministers leaning right, the AFGC made some gains. A decision was made to extend the implementation period from two to five years before a Review that could have resulted in the HSR system being mandated. The AFGC’s DIG system was also allowed to continue in conjunction with the HSRs (s7.3.5.6). It remains to be seen whether this was more than a temporary respite for food manufacturers, given the recent shift to the left in the balance of Lead Ministers on the Forum, and the strong possibility that a Labor Government will be installed in Canberra in 2019.

It is argued here that the 2014 decisions were less influential on Review outcomes than those made in 2008 and 2009 when left-leaning Lead Ministers formed a large majority on the Ministerial Council. The appointment of a former Labor Minister of Health known for his preventive approach to health policy and the membership of the Panel both suggested that the Council favoured its own agenda (an interpretive FoPL system) over that over the concerns about protecting business expressed by the Council of Australian Governments (s6.4.5). The Ministerial Council/Forum, flowing from its decisions in 2008 and 2009, was largely successful in implementing its FoPL agenda by means of the HSR system.

The continuing commitment to interpretive FoPL from the Forum despite the big swings in its political makeup is discussed under institutional arrangements below (8.3.5.3).

#### *8.3.4.5 Conclusion*

The creation and implementation of regulatory policy appears to have been the most important consequence of neoliberal ideological influence on FoPL decisions during and after the Review. Neoliberals favour minimal interference by governments in business activity, believing that the market is the best means of ensuring socially useful outcomes. Social democrats, on the other hand, believe that self-regulation will generally not deliver what is in the best interests of citizens, and that governments need to take a lead in ensuring that business activity supports rather than undermines public welfare and health.

The major area of dispute over FoPL during and after the Review, particularly in 2010 submissions to the Review and the Ministerial Council's response in 2011, was whether the food industry was already delivering a satisfactory FoPL system (the DIG scheme) without any inducement from governments, or whether governments needed to take the lead in the introduction of a different, potentially mandatory, interpretive system. The Ministerial Council/Forum, while changing markedly in the balance between right-leaning and left-leaning Lead Ministers among its membership, consistently rejected the industry view that the non-interpretive DIG scheme was all that was required. Instead it

supported the development and implementation of a government-led interpretive FoPL system. The political makeup of the Forum appeared to affect its attitude towards mandatory implementation of the HSR system should voluntary implementation prove insufficient, with a move closer to the industry position when right-leaning Lead Ministers were a majority in June 2014.

It is not clear, however, whether the food industry will be able to continue to successfully resist regulation should the Forum in the future decide that voluntary implementation had not delivered, particularly if Forum membership continues to move to the left. The HSR system appears on balance to be more the child of left-leaning than right-leaning politicians. If, as suggested here, the political makeup of the Ministerial Council in 2008 and 2009 was important for this outcome then public health and consumer groups arguably had greater ideological power, as defined in this study, than the food industry when it came to crucial decisions about FoPL.

### **8.3.5 Institutional power and FoPL decisions during and after the Review**

#### *8.3.5.1 Introduction*

This section considers how food industry influences on decisions about FoPL resulting from the Review were mediated by institutional factors. It is concerned with institutional power, defined as the extent to which actors attempting to influence government decisions are advantaged or disadvantaged by institutional arrangements, the institutional context in which these decisions are made (s4.4.5.1).

The new institutionalism, as described by Hay (2002),<sup>54</sup> is concerned with the mediating effect of institutional contexts on political decisions. These contexts include formal political structures, organisations and operating procedures together with informal conventions and dominant ideologies. Another context is history. The concept of ‘path dependency’ can be used to explain how political frameworks and policies from the past shape later contexts in which decisions are made (s3.7.1).



Three institutional factors important for FoPL developments are considered here: the regulatory policy environment in Australia and New Zealand, the institutional arrangements for joint trans-Tasman food standards which saw New Zealand linked with Australia through the Ministerial Forum on Food Regulation, and the history of responsibility for food labelling within New Zealand government agencies.

Strictly, as pointed out in Chapter 4 (s4.4.5.2), investment, network and ideological power all contribute to shaping the institutional context in which political decisions are made. They are treated separately in this thesis mainly because the theorists writing in these areas can provide a different lens to that of institutional theorists, often by attending to a different level of analysis.

#### *8.3.5.2 The regulatory policy environment*

From the perspective of some stakeholders, notably the AFGC and the National-led New Zealand Government, the main purpose of the Review was intended to be the reduction and streamlining of regulations that impinged on the food industry. Others, principally public health and consumer organisations, were mainly interested in further regulating industry through the introduction of a mandatory, interpretive FoPL system (s6.5.5, s7.3.14). The tension between these two perspectives was a central issue during the Review and subsequent developments.

Underlying the struggle between these perspectives were the regulatory policies of Australian and New Zealand governments. The Best Practice Regulation Guidelines issued in 2007 by the Council of Australian Governments<sup>310</sup> (COAG) were intended to streamline the regulatory environment and reduce the 'regulatory burden' on business. This provided one of the contexts in which the Ministerial Forum operated. The New Zealand equivalent, the Statement on Regulation issued in 2009,<sup>5</sup> aimed to 'unshackle' the New Zealand economy by offering a better policy environment for business than could be found in other countries, presumably including Australia (s6.3.4). This New Zealand Statement on Regulation was issued jointly by the Minister of Finance in the National-led Government and the Minister for Regulatory Reform (leader of the

neoliberal ACT Party). It is therefore not surprising, given its authorship, that it was more pro-business than the COAG Guidelines, which required a consensus across Australian governments of different political hues.

#### *8.3.5.3 Joint trans-Tasman institutional arrangements for food regulation*

Closer Economic Relations (CER) between Australia and New Zealand and increasing moves towards economic integration (s6.3.2) had a major impact in shaping the context for decisions about FoPL arising from the Review, particularly for New Zealand as the smaller partner. Joint arrangements for food standards, beginning with the Food Treaty in 1995, played a major role. The Food Treaty effectively made New Zealand another player, along with the Australian Commonwealth, State and Territory governments, in Australian arrangements for joint food standards and in the development of any new arrangements (s6.3.3).

The joint food regulatory system current during the Review and subsequent development of the Health Star Rating system was established in 2000 through the Australian Food Regulation Agreement (FRA). While New Zealand was not a party, the FRA nevertheless provided for the role agreed for New Zealand under the Food Treaty. The three main components of this food regulatory system were the Australia and New Zealand Ministerial Forum on Food Regulation (called the Ministerial Council until 2011) that set policy, the Food Regulation Standing Committee (FRSC) composed of senior officials who advised the Forum, and Food Standards Australia New Zealand (FSANZ), the agency for developing joint food standards. New Zealand was represented on all three bodies, and generally had a similar status (and vote) to that of each Australian State or Territory (s6.3.3).

The key bodies featuring in the Review and the development of the HSR system were the Ministerial Council/Forum and FRSC. The Forum had a central role. A contention of this study is that one aspect of membership of the Forum was crucial for its decisions that led to adoption of the HSR system. Membership, from at least 2008, has been numerically dominated by health ministers from Australian jurisdictions (s6.3.3.2).

It was suggested above (s8.3.4.4) that the balance between the number of left-leaning and right-leaning Lead Ministers on the Ministerial Council/Forum may have had a significant influence at different stages of the Review and development of the HSR system. In particular, the large majority of left-leaning Lead Ministers when the Review was established may have contributed to crucial decisions favouring public health advocates, giving them much greater ideological power than was the case for food manufacturers. While this might account for the relatively strong position for public health during the Review, it does not explain the continued support for implementation of the HSR system by the Ministerial Forum, even through periods when the large majority of Lead Ministers were right-leaning (Table 7.6). The fact that a large majority of Lead Ministers were health ministers for their jurisdictions throughout the Review and its aftermath provides a plausible explanation.

Australia's National Food Standards Council (NFSC) was established in 1986. It consisted of Ministers for Health from States, Territories and the Commonwealth. The NFSC continued as a central part of the structures set up by the National Food Authority Act. The NFSC was the predecessor of the Australia and New Zealand Food Regulation Ministerial Council set up in 2000 under Australia's Food Regulation Agreement (s6.3.2.1). A 2008 update on the Ministerial Council stated that each Australian State and Territory and the Commonwealth and New Zealand governments was to be represented by one or more Ministers, one of whom was to be the jurisdiction's Minister holding its health portfolio<sup>305</sup> (s6.3.3.2). Throughout the period from October 2008 to June 2018 in which Ministerial Council/Forum membership was tracked, eight of the ten Lead Ministers held health portfolios.

'Path dependency', an explanatory tool used by new institutionalist theorists among others (s3.7.2), is useful in providing an explanation for continuing predominance of health ministers on a body concerned with the whole spectrum of issues relating to food regulation in Australia and New Zealand. Why not instead, for example, agriculture ministers? History, path dependency theorists have argued, can be a powerful constraint on political change. The new institutionalism, it has been stated, "is highly

sensitive to the difficulties in bringing about significant institutional and programmatic change and to the irreversibility of paths once taken”.<sup>54 p107</sup>

Irrespective of the extent to which path dependency was a factor, the dominance of health ministers on the Council/Forum during and following the Review appears to have been very important for Review outcomes. Health portfolio dominance extended beyond just Council/Forum membership in the institutional arrangements for food regulation. Membership of FRSC, which provided advice to the Forum, was determined by the portfolio responsibilities of Forum Lead Ministers (s6.3.3.3). FRSC was responsible for oversight of the development and implementation of the HSR system and thus had a powerful role in influencing its direction.

The institutional arrangements that resulted in health dominance on both the Forum and FRSC, it is contended, thus provided substantial institutional power for public health advocates and a corresponding reduction in that for food manufacturers.

#### *8.3.5.4 The effect of institutional arrangements in New Zealand on FoPL policy*

New Zealand representation on both the Forum and FRSC was very different to that of most Australian jurisdictions in that, not only was it one of just two jurisdictions that did not have a health minister as Lead Minister (Tables 6.3, 6.4 and 7.1 to 7.5), it was the only jurisdiction without a health minister on the Forum. It is not therefore surprising that New Zealand was more sympathetic to food industry than public health concerns during the Review (s6.4.6), and chose not to participate in the Australian project to develop an interpretive FoPL system (s7.3.3.1).

New Zealand officials responsible for health aspects of food standards were, until 2002, located in the Department of Health. From 2010, after a period in a separate entity (the New Zealand Food Safety Authority), they were located in agencies focusing on economic development (s6.3.5). This relocation was accompanied by a shift in emphasis from health to the role of food production in the New Zealand economy.

As was noted in Chapter 6, if the Review had been conducted prior to 2002 the Department of Health would have been the agency responsible for leading the development of New Zealand's input. But from 2010, when the Review Panel was developing its recommendations, responsibility rested with the Ministry of Agriculture and Forestry (MAF) and then the Ministry for Primary Industries (MPI), both for which economic development was the primary consideration.<sup>314, 565</sup> This would appear to be at least part of the explanation for the emphasis that the New Zealand Government placed on industry rather than health concerns throughout the Review and subsequent development of the HSR system. This gave substantial institutional power to the food industry in the development of New Zealand policy regarding FoPL options under consideration as part of the Review.

In Chapters 6 and 7 what was termed 'institutional bias' was used to describe situations where institutional arrangements significantly favoured one stakeholder over others. An institutional bias in New Zealand favouring the food industry appears have influenced a number of decisions. As an example, the New Zealand Government arranged a "Manufacturers and Retailers Forum" with the Review Panel when it visited Wellington in 2010, leaving public health advocates with just "public consultation" meeting to attend (s6.5.3). Another example is the industry bias on the New Zealand Advisory Group established to consider FoPL for New Zealand (s7.3.3.2). This institutional bias probably lay behind New Zealand's decisions to not participate fully in the Review or in the development of the HSR system that followed (s7.3.3). However, in June 2014 New Zealand decided to fully participate in implementation of the system (s7.3.6.2). Closer Economic Relations, including the advantage for New Zealand exporting businesses in having the same requirements for food products on both sides of the Tasman, together with institutional arrangements for food regulation, trumped earlier policy positions related to the National-led Government's neoliberal regulatory agenda.

#### *8.3.5.5 Conclusion*

A number of Institutional arrangements appear to have significantly or decisively influenced government FoPL decisions during and after the Review. These included, for

both Australia and New Zealand, the joint food regulatory system that placed the Ministerial Council/Forum as the decision-making body, the dominance of health ministers on the Council/Forum and the history that resulted in this, and the pro-business regulatory policy environment in both countries.

There was a different institutional arrangement regarding portfolio responsibility for food regulation in New Zealand than was generally the case in Australian jurisdictions. This appeared to have had a large effect in New Zealand's initial policy position to stand outside the Review. In 2014, however, trans-Tasman arrangements and considerations related to New Zealand's pursuit of economic integration drew New Zealand into adopting the HSR system.

### **8.3.6 The relative influence of aspects of power in Review decisions**

#### *8.3.6.1 Introduction*

Research Question 2 has been partly answered in sections 8.3.1 to 8.3.5 above using the aspects of power framework developed in Chapter 4. Agency, investment, network, ideological and institutional power have all been examined for their influence on FoPL decisions during and after the Review. This section addresses the final part of Research Question 2: how were decisions about FoPL influenced by these factors? This requires looking at which aspects of power appeared predominant in shaping each major decision. It also means considering whether the aspects of power identified provide a sufficiently plausible explanation for each decision, or whether some influence appears to have been missed. The section works through key decisions in chronological order, beginning with the establishment of the Review and setting of its Terms of Reference. It concludes by assessing the relative contribution of each aspect of power to decisions as a whole.

#### *8.3.6.2 The Review of Food Labelling Law and Policy and its Terms of Reference*

Two competing institutional factors were identified as shaping the establishment and purpose of the Review. COAG, which asked the Ministerial Council to conduct the

Review, was concerned to reduce the ‘regulatory burden’ on industry. The Council itself, however, appeared more concerned about using the Review as a means of introducing an interpretive FoPL system that it had been considering for several years prior to the Review. In turn COAG was probably influenced by the investment power of business, and possibly also by an ideological preference of some members for smaller government and less regulation.

The Ministerial Council was almost certainly influenced by an institutional arrangement, the predominance of health ministers among its members, and possibly as well by the predominance of Lead Ministers from left-leaning jurisdictions on the Council when it endorsed the “Front of Pack Policy Statement” in 2009. Thus Institutional, investment and ideological power all probably had a role to play in influencing the Review’s Terms of Reference.

#### *8.3.6.3 Panel membership*

It was suggested above (s6.4.5.2, s8.3.4.4) that ideological power favouring public health advocates led to the appointment of Dr Neal Blewett to chair the Review Panel. As well, ideological power could have influenced the selection of a Panel with substantially stronger public health than industry representation. All jurisdictions represented on the Council, a large majority of whom were left-leaning, were consulted on Panel appointments (s6.4.5.2). The institutional arrangement that led to most Lead Ministers holding health portfolios was probably another contributing factor.

#### *8.3.6.4 The Review Panel’s recommendations (January 2011)*

The key FoPL recommendations in *Labelling Logic*,<sup>292</sup> the Panel’s report, were that an interpretive system was required, and that the best option for this would be a TLS (s6.6.1.4). This was, on both counts, a win for the public health policy community and a defeat for food manufacturers. The proviso that traffic light labelling should be voluntary in the first instance, however, favoured food manufacturers.

The dominance of public health sympathies among Panel members appears likely to be a large factor in its recommendations. As well, the unified and consistent message from the public health policy community provided the Panel with evidence and support for its recommendations, an example of network power benefiting public health advocates. The effects of path dependency also meant that the institutional and ideological factors underlying membership of the Ministerial Council strongly contributed to the public health tenor of the Panel's recommendations.

Both public health advocates and the food industry attempted to exercise agency power through their submissions to the Panel. The Panel's FoPL recommendations showed ample evidence of influence from public health submissions. The decision not to recommend that a TLS be mandatory appeared to result from concerns that it was not politically viable, given the regulatory policy environment (an institutional factor), rather than because of the case made in industry submissions (s6.6.1.3).

#### *8.3.6.5 The Forum's response to the Panel's recommendations (December 2011)*

The Review Panel's recommendations enabled the Forum, in December 2011, to make a concession to the food industry (no TLS) while providing impetus for their goal, against industry wishes, to introduce an interpretive FoPL system (s7.2). The rejection of traffic light labelling may have helped the Forum come to its decision to develop an interpretive system rather than seek one already developed from elsewhere.

The agency power of food manufacturers may have had some effect on the Forum decision to reject a TLS through lobbying directed at Forum members. The AFGC lobbying campaign may well have also targeted government ministers with portfolios other than health who might be more influenced by industry investment power or less ideologically aligned with public health. This could have contributed to the Forum's decision to reject a TLS. It was, however, insufficient to budge the Forum from its established policy position favouring the introduction of a single interpretive FoPL system.



The regulatory policy environment probably gave institutional power to food manufacturers in constraining the Forum from adopting mandatory labelling. This, however, was an unlikely decision anyway, given that it was not recommended by the Panel.

Again, the institutional and ideological factors behind the Forum's membership appears to have had the strongest impact on its response to the Panel's recommendations.

#### *8.3.6.6 Announcing a Health Star Rating system was to be developed (June 2013)*

The Ministerial Forum's announcement that a HSR system was to be developed was a continuation of its consistent commitment to interpretive FoPL going back to at least to 2009 when its predecessor, the Ministerial Council, agreed the Terms of Reference of the Review, appointed Dr Blewett as the Review Panel's chair, and endorsed a FoPL policy statement (s8.3.6.2). Both institutional power (the predominance of health ministers on the Council/Forum) and ideological power (the predominance of left-leaning Lead Ministers in 2009) are probable reasons behind this commitment to interpretive FoPL.

More immediately, the decision in favour of an interpretive system based on health stars evolved from a development process the Food Regulation Standing Committee (FRSC) had been tasked with by the Forum. FRSC members were mainly health officials. The Project Committee established by FRSC was chaired by Australia's most senior health official, the Secretary of the Commonwealth Department of Health and Ageing (s7.3.2). Finally, the Project Committee comprised members from FRSC, and nine stakeholder representatives, five of whom were members of the public health policy community. The four industry representatives, on the other hand, represented organisations with differing perspectives on FoPL (s8.3.3.2).

#### *8.3.6.7 The Forum's rejection of a Regulation Impact Statement for the HSR system*

One of the most striking features of the HSR development process was the rejection by the Forum, in December 2013, of the call from the Australian Office of Best Practice

Regulation (OBPR) for the HSR system to be subject to a Regulation Impact Statement (s7.3.5.4). The OBPR's call had been supported by the new right-leaning Forum chair. At this time seven of the ten Lead Ministers on the Forum were right-leaning. A likely explanation for this is the predominance of health ministers with a vote on the Forum. While the seven represented right-leaning governments, it appears that generally these Ministers were advised by health officials who were not political appointments. Another institutional factor, the Westminster Parliamentary system, may thus have played a part here by providing non-political officials to provide advice. This would be in addition to the most likely main causative factor – the path dependency going back at least as far as 1986 in Australia that made food regulation primarily a health portfolio responsibility.

#### *8.3.6.8 Adoption of the HSR system (June 2014)*

The Forum formally announced at its meeting in June 2014 that the HSR system was to be adopted. This followed reported lobbying of the Forum's chair by the AFGC and concessions by the public health policy community that were apparently made to keep the HSR system alive. The implementation period before a Review of the HSR system was extended from two to five years. A further concession to the food industry was that the non-interpretive DIG scheme could be used in on labels that also carried the HSRs. The AFGC also made a gain when the Forum did not repeat the threat to make the HSR system mandatory. Neither, however, did they say they were withdrawing it (s7.3.5). These concessions did not change the general direction that the Forum had consistently held to since before the Review – their support for an interpretive FoPL system to be introduced.

In June 2014 there were eight right-leaning and two left-leaning Lead Ministers on the Forum, yet it still stayed on course from its earlier decisions to develop and implement an interpretive FoPL system. This was in spite of opposition from food manufacturers led by the AFGC which again resurfaced at the time (s7.3.4.4, s7.3.5.5). AFGC's lobbying may have slowed the process, but it did not lead to a change in direction. The contention here is that the primary driver of this direction was the dominance of health ministers on the Forum. In June 2014 eight of the ten Lead Ministers held health portfolios, a

balance that had remained the same over the course of the Review and then the development and implementation of the HSR system.

#### *8.3.6.9 What the identified aspects of power did not explain*

Business influences on key decisions about FoPL by the Review Panel, and then by the Forum during the development of the HSR system, have generally been explained in terms of the aspects of power framework developed in Chapter 4. Two possible influences were identified that were not included in the framework. One was the importance of political will. The other was the influence of events.

#### The role of political will

When health concerns are opposed by industry, more is required than just having a government that is ideologically sympathetic to policy decisions that advance public health. The institutional and investment power of industry can still make such decisions difficult, even for politicians who are ideologically disposed to make them. What is also needed, then, is political will.<sup>220</sup>

A study of effective advocacy strategies for influencing government nutrition policy stressed the value of having a political champion. A Cabinet Minister who assumed this role was particularly valuable, being perfectly positioned to advocate for an issue in Cabinet.<sup>221</sup> Business interests could lose on occasion, even when contextual factors appeared to favour them, when a well-placed politician took a political risk and opposed them.<sup>165 p191</sup>

Nicola Roxon, Australian Minister of Health and Ageing during the Review, was well-placed to influence it, particularly since her Parliamentary Secretary Catherine King chaired the Ministerial Council. Roxon had a high reputation as a courageous politician committed to improving public health. Her political leadership was seen as crucial to the introduction of plain packaging for cigarettes in Australia.<sup>566</sup> Professor Mike Daube, in commenting on Roxon's driving through plain packaging in the face of "immense and

often vicious industry opposition”, described her as “simply the best and most courageous minister for prevention Australia has seen”.<sup>566</sup> pviii

Key components for introducing interpretive FoPL in Australia were put in place during Roxon’s time as Minister of Health. In particular, the Terms of Reference for the Review encouraged the Review Panel to put a strong emphasis on introducing an interpretive FoPL scheme(s6.4.5.1), Dr Neal Blewett was appointed to lead the Panel, and the Panel had very strong public health representation (s6.4.5.2).

Roxon changed portfolios to become Attorney-General in December 2011,<sup>567</sup> five days after the Ministerial Council responded to the Panel’s report. Her successor as Minister of Health continued to seek an effective interpretive FoPL scheme when Jane Halton, Secretary of the Department of Health, took leadership of the collaborative process (with industry, public health and governments) that resulted in the HSR system. Halton was seen as highly effective in this role. An informant in a study of the process, for example, spoke of her key role in actively engaging with various stakeholders to ensure they stayed at the table, making collaborative progress possible.<sup>15</sup>

Given Roxon’s strong leadership on plain packaging, it might be asked why she was not also prepared to support the traffic light system (TLS) recommended by the Review Panel. There is the lack of clarity over why Roxon and her colleague, Ministerial Council chair Catherine King, rejected a TLS. The public reason given for the rejection was a lack of evidence (s6.6.2.5). There is room for doubt about whether this was the primary reason, particularly since the Ministerial Council/Forum was to later endorse the HSR system for which there appeared to be much less evidence than for a TLS.

To conclude, the Australian Government appears to have exercised political will to see that an interpretive FoPL scheme was introduced into Australia. It is unclear whether it was because of a lack of political will, or for other reasons including insufficient evidence, that traffic light labelling was rejected.

### 'Events, dear boy, events'

As British Prime Minister Harold Macmillan once famously put it, political decisions can very much be driven by events.<sup>568</sup> An example would be the Council of Australian Government's (COAG's) request to the Ministerial Council to conduct a review of food law and policy. This request had nothing to do with FoPL, but was instead part of the COAG agenda to reduce the 'regulatory burden' on industry. The Review provided the Ministerial Council with the opportunity to implement its wish for an interpretive FoPL system to be introduced. Without the COAG request the Review and the development of the HSR system that followed were most unlikely to have happened when or as they did.

A change of government in the 2013 Australian federal election was a prospective event feared by public health advocates as it might, from their perspective, detrimentally affect FoPL developments arising from the Review. When this change eventuated it increased the ideological and institutional power of food manufacturers. This probably assisted in some gains for manufacturers, but was not sufficient to change the Forum's commitment to the introduction of the HSR system.

The inevitable intrusion of events, then, makes attempts to predict political decisions from considerations about power a risky enterprise.

### **8.3.7 Conclusions about the relative influence of aspects of power**

Institutional, ideological and investment power all appear to have been significant factors shaping the context in which FoPL decisions were made. They did this in inter-related ways, particularly in the way investment and ideological power influenced institutional arrangements. This inter-relatedness is discussed first. The roles of network and agency power are then considered.

#### *8.3.7.1 Institutional arrangements, ideological power and investment power*

Institutional arrangements, inter-related with and shaped in part by ideological and probably also investment power, provided institutional power in various ways to

stakeholders. It contended that two of these arrangements, the regulatory policy environment and aspects of the membership of the Ministerial Council/Forum, were the two most important factors influencing government decisions during the Review and subsequent development of the HSR system.

#### The regulatory policy environment

Major FoPL decisions made during and after the Review were inevitably influenced by the tension between minimising the ‘regulatory burden’ on the food industry and using food labels as part of the toolkit to improve population health. The regulatory policy environment was a relatively constant institutional arrangement influencing these decisions. In theory, at least, a central purpose of minimising regulation is to encourage business investment, particularly when this brings more jobs. To the extent that this was the a major reason for the regulatory environment, investment power also had a relatively constant effect.

The regulatory policy environment in both Australia and New Zealand during the Review and subsequent development of the HSR system reflects, in the author’s view, a pro-market and pro-business ideology, referred to as ‘neoliberalism’ in this thesis. Some aspects of this ideology are likely to have substantial public support. ‘Nanny state’ arguments, for example, appeared to play a significant role in the defeat of the Clark Government in New Zealand in 2008.

Using Gramsci’s terminology, this ideology may represent cultural hegemony (s3.6.4): the acceptance of pro-market and pro-business ideas by a significant section of the population, and perhaps by a majority. In 1977 Lindblom asked his readers to consider the possibility that business executives had succeeded in achieving “an indoctrination of citizens so that citizens’ volitions serve not their own interests” but those of business.<sup>63</sup>  
<sup>p202</sup> He went on to suggest ways in which this may have occurred (s3.4.3).

The regulatory policy environment arguably provides the best single explanation as to why the mandatory FoPL system sought by public health advocates has not, at least by 2018, been achieved. This suggests that institutional power was the primary influence

of FoPL decisions. But on the other hand this environment may be product of pro-business ideology, meaning that a case can be made that instead ideology is the primary influence. This is not a useful debate to have. Each explanation operates at a different level of analysis. A focus on institutional power might lead to advocacy to change current regulatory policy. A focus on ideological power suggests that an effort to change people's thinking about the role of business in society is what is required. Viewing the position through both lenses (Chapter 3) may well be needed to shift the playing field more towards a concern for improving population health.

#### The membership of the Ministerial Council/Forum

The predominance of health ministers on the Ministerial Council/Forum provides an example of path dependency. This health predominance extends back at least as far as 1986 (s6.3.2.1). It appears to supply a good explanation for FoPL decisions favouring health over business interests, including the Review's Terms of Reference and the Forum's commitment over the last decade (to 2018) to see an interpretive FoPL system introduced. The health aspect of Forum membership may have been more important than the shifting balance between left-leaning and right-leaning Lead Ministers among its members. Even with eight of ten Lead Ministers from right-leaning jurisdictions, the Forum in June 2014 committed to continuing with implementation of the HSR system and ignored a call for it to be subject to a Regulation Impact Statement (s7.3.5.6).

The ideological balance on the Council in 2008 and 2009 (only one or two right-leaning Ministers) may have been a factor, perhaps a decisive one, when the Council first committed to introduction of an interpretive FoPL system. Perhaps all that can be said is that the Council/Forum tended to favour health over industry interests, with both the path dependency argument (the dominance of health ministers) and the ideological argument (the dominance of left-leaning Ministers when crucial decisions were made around the time of the Review) both having merit. However, the regulatory policy environment constrained the ability of the Council/Forum to make the HSR system mandatory.

#### *8.3.7.2 Network power*

The influence of network power does not appear as pervasive in affecting FoPL decisions as institutional and ideological power, but in the one example discussed above (s8.3.3.2) it played an important and possibly crucial role. A tight Australian policy community focusing on FoPL was deliberately formed among health organisations and with consumer organisation Choice. This public health policy community was able to outdo industry in influencing the Review Panel, which recommended introduction of interpretive traffic lights as advocated by public health groups and rejected the industry's DIG FoPL scheme. The public health policy community was able to generally hold its own against the much greater resources of the AFGC and other parts of the food industry in the collaborative development of the HSR system.

#### *8.3.7.3 Agency power*

Agency power played a limited but still important role through the consistent messages the public health policy community pushed in submissions to the Review from member organisations. Industry lobbying appeared to have influenced the HSR system adopted in June 2014, but was not able to change what food manufacturers in particular did not want, implementation a single, interpretive FoPL system that at a future date might become mandatory. This suggests agency power was not as significant as other aspects of power in influencing FoPL decisions. Care is needed in making this assessment because the study did not comprehensively explore all the business practices that have been shown to be used when business interests are concerned to combat public health advocacy.

#### *8.3.7.4 Conclusion*

Institutional arrangements, shaped by ideological and probably also investment power, provided institutional power to the food industry through the regulatory policy environment. The Ministerial Council/Forum, another institutional arrangement, generally empowered public health advocates, particularly through the predominance of health ministers among its members, and probably as well through the predominance



of members from left-leaning jurisdictions when the Review was established. Network power had a limited but effective influence through the public health policy community.

#### ***8.4 Implications for public health advocacy***

This section addresses Research Question 3. It considers what can be learned from this case study that might help achieve better health outcomes from future government decision making when business and public health interests conflict. The section applies not just to FoPL or food policy decisions, but to all policy areas where business practices can detrimentally affect population health such as climate change, smoking, problem gambling, product safety, and over-consumption of alcohol. Some suggestions are relevant just to New Zealand or to both Australia and New Zealand, but most would apply in other countries as well.

Eight suggestions arising from this case study are made that might help with public health advocacy and advancing public health goals. These are:

1. advocate for a change in regulation policy in Australia and New Zealand that focusses less on favouring industry and more on favouring health;
2. work on reframing the debate about regulation policy from the 'regulatory burden on industry' to 'the industry burden on public health';
3. advocate for a change in the location of food policy advice in New Zealand from the Ministry for Primary Industries to the Ministry of Health;
4. form policy communities focused on public health policy issues in which policy change is sought;
5. work to find political champions who can help get better public health policies on to the political agenda and into legislation and practice;

6. be prepared to become involved in collaborative governance arrangements also involving industry if this looks the best politically feasible option available on a particular issue;
7. be flexible in responding to changing political environments and be ready to take opportunities provided by 'policy windows';
8. recognise that, with respect to FoPL at least, the food industry is not monolithic, containing groups such as primary producers that might be potential allies on some issues.

#### **8.4.1 Changing the regulatory policy environment**

The Public Health Association of Australia (PHAA), in its second-round submission to the Review, argued that the “present emphasis on industry regulatory burden over the economic and social burden due to poor diet and resulting ill health has limited the ability of the food regulation system to improve health”.<sup>569 pp9-10</sup> An attempt was made in New Zealand, in 2007, to address this unfavourable regulatory environment by using the Public Health Bill as a vehicle. An early version of the Bill, introduced by the Labour-led Clark Government, contained a clause allowing the making of regulations “reducing, or assisting in reducing, risk factors ... associated with, or related to, non-communicable diseases”.<sup>570 Section 374(x)</sup> This provision was, however, dropped in a later version of the Bill.<sup>571</sup> The Bill passed its first reading in 2007, but before its second reading the Clark Government was defeated in 2008. The Bill was withdrawn from the Order Paper by the National-led Government in 2015.<sup>572</sup> Now, as at 2018, with a Labour-led Government back in power, it would be timely for public health advocates to press for the Bill, with a similar clause allowing regulations designed to reduce non-communicable diseases, to be re-introduced.

At the time of writing (2018) New Zealand has a left-leaning government, as defined in this thesis. There is a strong prospect of this becoming the case in Australia following the federal election in 2019. This might create a more favourable ideological environment for public health advocates in Australia and New Zealand to make the case

for changing the regulatory environment to give more weight to health. The New Zealand Government's planned focus on wellbeing is particularly encouraging in this respect. In opening an international conference on wellbeing economics in September 2018, Finance Minister Grant Robertson said the following:

The complex, messy problems that create poverty and inequality require us to look beyond basic economic issues, as essential as they are to solving them, to the wellbeing of our wider communities, the impacts of cultural alienation and our understanding of what makes for security and hope.<sup>573</sup>

A focus on well-being might mean that consumers pay more for some products if their manufacturers have to do more to cover externalities such as effects on population and ecological health. Reductions in health spending on non-communicable diseases could free up funds to compensate those on lower incomes for, for example, a rise in the cost of food.

A united effort from a committed public health policy community could focus on making the case to governments for a change in regulatory policy, focusing on what this offered for improving health outcomes and reducing the drivers of climate change. One part of doing this could be trying to reduce the effectiveness, for industries and their Parliamentary allies, of the framing of regulatory policy in terms of needing to reduce the 'regulatory burden' on industry.

#### **8.4.2 Reframing debates: the industry burden on health**

Industry framing of policy issues has been identified by Cullerton and colleagues as a significant barrier to advancing public health policy initiatives.<sup>220</sup> In a later paper the same authors argued that reframing policy issues could be an effective advocacy strategy<sup>221</sup> (s5.4.1).

The 'regulatory burden on industry' is a frame used by business interests when their products or practices have been challenged as damaging to population health. It was used by the Food and Grocery Councils in both Australia (s7.3.4.3) and New Zealand

(s6.6.2.1) when opposing interpretive FoPL. Any success in reframing this issue would could be valuable in reducing this damage.

The Council of Australian Governments (COAG) guidelines underpinning the Review aimed to reduce “the regulatory burden on business arising from the stock of regulation”<sup>310</sup> (s6.3.4, s6.4.4.1). New Zealand officials, when advising the Minister for Food Safety to be wary of the Review, noted that reducing the ‘regulatory burden’ was consistent with government policy (s6.4.6). The Ministerial Forum, in responding to the Review Panel’s report, wished to encourage the food industry to “play a greater role in promoting healthy eating, being mindful not to unduly increase the regulatory burden”<sup>322 p5</sup> (s7.2.1).

It is suggested here that ‘regulatory burden’ is a loaded term that those in public health should avoid unless used with quotation marks. It can imply that industry carries a load that should be lightened. Use of the term ‘regulatory burden’ implies that something needs to be done to hold down or reduce business costs. The term thus focuses attention on costs to business, and away from costs imposed by business on others. When business practices or products have consequences for health one could speak of ‘the industry burden on health’. This would help focus the debate where it belongs: in the case of FoPL and other food-related issues, does the ‘industry burden on health’ resulting from the consumption of unhealthy food do more harm to the general good than the ‘regulatory burden’ on industry arising from requirements that reduce unhealthy food consumption? Progress in this direction should greatly assist advocacy to change the regulatory policy settings in Australia and New Zealand. It could also be a step towards helping reduce the ‘cultural hegemony’ of business. In turn this would enable governments to more readily regulate industries as part of their duty to protect public health.

#### **8.4.3 Institutional arrangements in New Zealand relating to food regulation**

Responsibility for policy advice on food regulation in New Zealand was, until 2002, located in the Ministry of Health (MoH) when it was transferred to a semi-autonomous

body, the New Zealand Food Safety Authority (NZFSA). In 2010 the NZFSA was merged into the Ministry of Agriculture and Forestry (MAF), which in turn became the Ministry for Primary Industries (MPI) in 2012. The focus for MAF and particularly MPI was on economic growth, while nutrition policy remained with the MoH. MAF/MPI officers advising the Minister for Food Safety consulted with the MoH where nutrition policy was involved. In 2011 MAF officials ignored MoH advice when advising the Minister that interpretive FoPL was best left to the food industry and the market. This led to New Zealand not participating in the Review and opposing the Review Panel's recommendation to introduce interpretive labelling (s6.6.2.4).

The location of New Zealand advice on food regulation in an economically-focused agency is very different from Australian arrangements. Between 2008 and 2018 eight of the nine Australian lead-Ministers on the Ministerial Forum responsible for food regulation held health portfolios. The Minister for Food Safety is New Zealand's sole representative on the Forum, maintaining the potential for public health to lose a vote on future Forum issues in addition to FoPL. In September 2018 the Minister for Food Safety was also Minister of Agriculture and the Lead Minister in MPI.<sup>574</sup>

Pressure needs to be brought on the New Zealand Government to move food regulation advice out of MPI, and ideally back into the Ministry of Health. Bringing together a policy community to focus on this would be a good first step.

#### **8.4.4 FoPL policy communities**

The existence of a policy committee formed in Australia from health organisations and the consumer organisation Choice to advance interpretive front of pack labelling (FoPL) was found to give the public health community significant network power in influencing FoPL decisions during and following the Review. It is likely that the need to advocate for much-needed improvements to the HSR system will continue for some time. The Australian policy community will continue to be needed. Pulling in other organisations, particularly from outside public health, would further strengthen the community's power to influence future FoPL decisions.

There was no such coordinated policy community around FoPL in New Zealand during the Review. There is evidence, since then, of some common views among public health organisations and people. In 2014 an “expert panel” involving 52 New Zealand-based representatives from the health sector recommended that New Zealand join with Australia in adopting the HSR system, and that it become mandatory if industry failed to widely adopt it (s7.3.6.3). The potential clearly exists to establish a FoPL policy community in New Zealand.

The ideal would be for Australian and New Zealand FoPL policy communities to become one. This would mean that Ministerial Forum members from both sides of the Tasman were consistently getting the same messages. Food manufacturers maintain close inter-country links, with the Food and Grocery Councils in both countries holding very similar policy positions. Given the integrated food regulation system that exists in both countries this needs to be matched by public health advocates.

#### **8.4.5 Political will and political champions**

The value of having a political champion, particularly if this were a Cabinet Minister, was discussed above (s8.4.5). Forming a relationship with senior members of Government has been identified as an effective advocacy strategy,<sup>220</sup> with Cabinet Members the ideal.<sup>221</sup> Relationships grow over time, and opportunities to build them with potential political champions need to be taken when they arise.

#### **8.4.6 Collaborative governance as a means to advance the public health agenda**

This section considers what can be learned from the process by which the HSR system was developed. Central to the process was a focus on developing a new system that would be accepted by both the food industry and public health organisations. Both these stakeholders had roughly equal involvement in a generally collaborative process under strong leadership from Dr Jane Halton, Chief Executive of the Australian Government Department of Health and Ageing. Both were strongly motivated to be involved in the process: public health by the hope that an acceptable interpretive FoPL system would

result, and industry by the fear that a mandatory interpretive system might otherwise be imposed on them.

The process has been described by Wood and Tenbensen as “collaborative governance”, defined as a “tool that policymakers can use to bring competing coalitions into a decision-making process focused on negotiated compromise rather than adversarial competition”.<sup>14 p404</sup> Wood and Tenbensen, based on the results of interviews with stakeholders involved in the process, believed that as a deliberate tactic Australian officials took the “entrenched preferences” of both stakeholder groups off the table, forcing both sides to negotiate and putting them on a more level playing field.<sup>14 p411</sup> The industry’s Daily Intake Guide (DIG) was most unlikely to be preferred by the Forum, given their commitment to an interpretive scheme. Whether or not the rejection in 2011 of the traffic light system wanted by public health organisations was deliberately designed to force both parties to work together, it appeared to deliver the collaborative process sought by the Ministerial Forum and driven by Dr Halton.

Could a collaborative governance process deliver outcomes sought by public health in other areas where strong industry opposition results in reluctance by governments to implement proposals from public health organisations? Three conditions present in the HSR case would seem to be required: a clear policy steer that a government wanted change, a credible threat to impose change if industry was not prepared to work collaboratively to achieve it, and strong leadership of the process with a focus on achieving change consistent with the policy objective.

This looks a challenging set of conditions to be met. Further, it remains to be seen whether this collaborative governance process for the HSR system delivers on the policy objective over time by making a meaningful contribution to a healthier population. This raises the question as to why, if a government wanted a particular change, it did not just impose it on industry. This happened in Australia, for example, with plain packaging for tobacco.<sup>575</sup> It is suggested here that imposition of change is often seen by governments as not politically achievable at a particular time, so that public health advocates might need to consider working with a sympathetic government to implement a collaborative

governance process, at least in the short to medium term. This would inevitably involve compromises, as it did with the HSR system. At issue is the trade-off between achieving something that could be better than the status quo and with potential for improvement, or holding out for more favourable circumstances in which a government may impose what is, from a public health perspective, a better solution.

#### **8.4.7 Flexibility in response to changing political environments**

The Ministerial Council announced, in October 2008, that there would be a review of food labelling law and policy (s6.4.5). Four months later, in February 2009, a group of Australian health, nutrition and consumer organisations met to develop an agreed position on FoPL (s6.4.2.1) and the Australian public health FoPL policy community was born. This was eight months before the release of the Review's Terms of Reference in October 2009. This policy community was thus well prepared to take advantage of whatever opportunities the Review might provide to further their agenda. They were well placed to respond during the Review's consultation phase in early 2010. The case they made for introduction of a traffic light system (TLS) was adopted by the Review Panel (s6.6.1).

Once the Australian FoPL policy community knew that the case for introducing a traffic light system (TLS) had been rejected by Ministers, and that Ministers had opted to develop a new FoPL system, they ceased advocating for a TLS. When, following the election of the right-leaning Abbott Government in 2013, the political environment became less friendly, the policy community made concessions and suspended advocacy for the new HSR system to be mandatory. Such decisions enabled the policy community to remain part of the governance network setting the direction for the HSR system. The also helped their primary aim, introduction of an effective interpretive FoPL system, to remain reasonably on track in spite of some bumps along the way.

Flexibility in response to changes in political and social environments, when these occur, is highly important for successful advocacy. It has been argued, for example, that advocacy for adapting to climate change need to recognise the different world views,



values and interests of decision makers and adopt an appropriate framing likely to influence action in response.<sup>576</sup>

A second highly important feature of successful advocacy is the ability to take advantage of 'policy windows' when they occur. A policy window opens when there is an advantageous time for policy change. A review of the enablers of successful advocacy found that "being prepared to take advantage of new political opportunities when they arise is crucial as missing that window will mean the policy solution will fall on deaf ears".<sup>220 p2650</sup> Similarly, a review of advocacy for health equity reported a consensus in the literature that advocates must be ready to take advantage of 'windows of opportunity', particularly since health issues can struggle to stay for long on the policy agenda.<sup>136</sup>

#### **8.4.8 Recognising and using divisions within the food industry**

The analysis of second-round submissions to the Review (s6.5.5) revealed very different attitudes towards traffic light labelling among different sectors of the food industry. Of 32 submissions from food manufacturers, 19 (59%) referred to a TLS in their submission, as did two of four submissions from food retailers. Only three of 41 submissions (7%) from primary producers, however, did so. All but one of the manufacturers mentioning a TLS opposed its introduction, as did all four retailers. Only one primary producer of the three that referred to a TLS, and of the 41 that submitted, opposed a TLS.

It is contended here that the strong interest in FoPL from food manufacturers and retailers, and apparent indifference from primary producers, exposes a split in the food industry as a whole, and that this is an important consideration for public health advocacy around FoPL. It suggests that use of the term 'food industry' might be better avoided by FoPL advocates. This would help focus debate on food manufacturing and retailing business practices, and not unnecessarily annoy neutral or potentially helpful food producers.

Given the focus in nutritional advice on consuming whole rather than processed foods, an alliance with food producers to bring about a health-promoting shift in food

consumption, and not just through interpretive FoPL, might be an idea well worth pursuing.

## ***8.5 Strengths and limitations of the study***

Strengths of this case study include the literature reviews and theoretical development in Chapters 3 to 5 that used multiple lenses in considering the sources of business power when industry comes in conflict with public health; the mixed-methods design which enabled collection from multiple sources, and both quantitative and qualitative analysis, of data about business power; and the time period covered by of the study which included a number of key events.

Limitations included the timing of interviews with key informants and the low representation of informants from industry; a lack of data regarding some business practices which may have led to an underestimate of business agency power; limited external validity because of the unusual collaborative process by public health and industry in developing the HSR system; and a lack of finality about the final outcomes of the Review restricting conclusions that could be drawn about the relative power of industry and public health groups.

### **8.5.1 Strengths**

A major strength of this study is that it cast a wide net in a search for sources of business power when industry comes into conflict with public health. This strength comes from both the literature reviews and theoretical development in Chapters 3 to 5, and from the range of evidence sources (documents and interviews) for the case study in Chapters 6 and 7.

The wide net helped in developing varied perspectives about the influences on policy decision making. These perspectives moved well beyond what Bernier and Clavier called a linear model of policy making, and included approaches from political science needed to understand the levers of influence on health policy.<sup>59</sup> The framework involving five aspects of power in Chapter 4 was developed to do assist with doing this. As an example,

the ideological and institutional lenses used in the case study helped with the identification of both the changing balance of left- and right-leaning ministers on the Ministerial Council/Forum, and the predominance of health ministers (s8.3.4.4). This helped in explaining Council/Forum decisions relating to FoPL. It also identified that advocacy targeted at Council/Forum decisions on not just FoPL but all food-related issues within their area of responsibility should emphasise health benefits as a lever of influence.

A “triangulation design” (Cresswell and Plano Clark, 2007<sup>23</sup>) was adopted for the case study. Such designs involve obtaining complementary data on a topic using a mix of quantitative and qualitative methods. Some datasets were obtained using what Cresswell and Plano Clark call a “data transformation model”<sup>23 p63</sup> in which qualitative data are collected and then transformed into quantitative data. Other qualitative data are directly reported as such. This took advantage of the flexibility the design provides to analyse and present data on different topics within the case study in ways best suited both to each topic and the available data on that topic.

The quantitative analysis of Review submissions in Studies 1 and 2 brought to light useful data that could otherwise be missed, such as the very distinct differences among segments of the food industry in views of and attitudes towards FoPL (s6.5.5, Tables 6.6 and 6.7). Monitoring of events during and after the Review, using Google Alerts, provided a large store of qualitative information which was not always documented in other sources. This included details around the pulling down of the HSR website by the Forum’s chair in February 2014 that exposed the likely influence of the AFGC (s7.3.5.5). Interviews with key informants helped confirm and extend information from other sources, such as the importance of public health advocates speaking with one voice on policy issues (s7.4.3).

Syntheses including both qualitative and quantitative evidence have been identified as useful for informing health policy.<sup>22 p18</sup> Such a synthesis is provided in this case study. Study 2 (s6.5.6), for example, reports both quantitative and qualitative data relating to

the use of framing in food industry submissions to the Review. The frames examined were identified in Chapter 5 as being widely used by a variety of industries with products under challenge from public health advocates. This makes the findings of Study 2 potentially useful in making cases to decision makers more widely than just in relation to FoPL.

The case study was conducted using a critical realist approach. It generally met the evaluation criteria for best practice in critical realist research (see Table 2.1). The main exception related to triangulation: there was just a single investigator.

Another strength was the timing of the study, beginning while the Review Panel was still involved in its initial consultation, and ending after the HSR system had been adopted and had been operating for over four years. A great deal more data relevant to the research questions was generated by covering the origins of the Review, the Review itself, the response to the Review by governments, and the development and implementation of the HSR system than would have occurred if the focus had been just on one of these phases. As an example, Closer Economic Relations (CER) between Australia and New Zealand (s6.3.2) heavily influenced New Zealand's participation in at every stage through joint arrangements about food regulation, including the decision to adopt the HSR system in 2013 despite political misgivings (s7.3.6.2).

The 'aspects of power' framework used in this study appeared to be a strength, and may have wider potential as a research tool. Its development was not envisaged at the start of the study. It was developed because the literature review in Chapter 3 did not uncover a framework that seemed useful for considering all aspects of business power that were regarded as relevant to this thesis. The need for multiple lenses in looking at government decision making that came through the literature review also helped shape the framework. Other studies looking at how public health advocates can make progress in bringing about policy changes in the face of business power might find the framework useful.

Similarly, the set of business practices used in attempts to exercise agency power, identified in Chapter 5 and set out in Table 5.1, might be useful for other studies concerned with business power and public health.

The breadth of the case study was arguably both a strength and a limitation. It was a strength in that it enabled a large range of perspectives to be examined for their relevance to business power, but meant that the review of each perspective was sometimes less thorough than would have been ideal. Some of the limitations discussed below are in part the result of this.

### **8.5.2 Limitations**

Most limitations of the study relate to the thin spread of available resources over a wide range of issues, sometimes resulting in a lack of depth.

Both the timing of interviews of key informants, and a lack of industry representatives among these, restricted the information available from this source. Interviews were conducted in 2011 after the Review Panel had reported but before the Ministerial Forum responded. The later development of the HSR system in response to the Panel's report was highly relevant to the research questions, and there is little public information available about much of this development process. Chapter 7 is at times speculative about how aspects of power played out during the government-led, collaborative process involving both the food industry and public health that resulted in the HSR system. Interviews focusing on this process could have proved highly valuable.

Only two of the 20 key respondents interviewed (one from New Zealand and one from Australia) were from the food industry. In the New Zealand case only one of five industry representatives approached agreed to be interviewed. This seriously limited opportunities to explore facets of industry positions which were a central focus of the research questions.

Reports from two other studies involving interviews with participants in the HSR process are available. One of these also suffered by having only one respondent from industry.<sup>15</sup> The other had a quite different focus to the research questions in this case study.<sup>14</sup>

The limitation just described, a lack of key informants from industry, is one of the limitations arising from a lack of depth that might reduce the validity of the analysis in some cases. Another relates to business practices that have may have influenced Review outcomes. A comprehensive framework for exploring a wide range of business practices was developed in Chapter 5. This was not able to be fully applied. In part this was because the methods used in the case study were insufficient to capture relevant data. An examination of Australian federal and state lobbying registers, for example, might have provided better evidence about the extent of food industry lobbying relating to FoPL.

The incomplete picture on relevant business practices was also a result of the breadth of the study. This led to insufficient time to investigate, or space to report on, some of the business practices that had been identified in the framework. Business practices that may have influenced Review outcomes that were not considered included working with, enlisting or creating allies, public relations practices and corporate public affairs activities. This means that the contribution of business practices to Review outcomes may be under-reported, and consequently the business relative influence of business agency power under-estimated.

The external validity of this case study is also limited. The development process that resulted in the HSR system involved a collaboration between public health advocates and industry under strong government leadership. The opportunity to do this arose from an unusual confluence of events which generally would not occur for other issues where population health is under threat from industry business practices. As well, it could be argued that industry was prepared to engage with public health over FoPL because this was less important to their business model than, for example, the ability to encourage the purchase of their products by or for children. As was suggested above (s8.3.2.4),

most food companies would probably be able to live with interpretive FoPL labelling, particularly when they had time to adapt.

A further limitation is the lack of information about the role that may have been played in shaping FoPL outcomes by what Pertschuk has termed ‘inside advocates’ – political leaders and public servants.<sup>577</sup> While there are suggestions that, for example, Federal Minister of Health Nicola Roxon and her colleague Ministerial Council chair Catherine King supported the introduction of interpretive FoPL, little direct information about this was found, meaning that this could not be adequately explored. It can be inferred from evidence presented in this thesis that it likely Roxon and King were generally supportive of public health perspectives during the Review, the appointment of Dr Neal Blewett as the Review’s chair being one example.

Given the dominance of health ministers on the Council/Forum it is probable that health officials had a major role in shaping advice to ministers, but no direct information on this was found. Some of these officials also played a direct part in the development of the HSR system through their membership of the Food Regulation Standing Committee. While several officials and both public health and industry representatives involved in developing the HSR system were interviewed for the study this was prior to the HSR development process. Had the interviews been conducted later, direct information on the role of ‘inside advocacy’ may well have been available.

Finally, whether changes sought by public health advocates to the current (2018) system might occur as a result of the five year review in 2019 remain unknown (s7.3.15, s7.3.16). Uncertainties include whether a HSR eventually appears on all applicable products. It is possible the system will become mandatory, an outcome for which there has been substantial public health advocacy. The extent to which public health or industry can be judged as doing better as a result of Review outcomes (s8.2.4) remains limited until the final shape of the HSR system is known.

Some of these limitations are addressed in the section on further research that follows as part of the Conclusions chapter.





# Chapter 9

## Conclusions

This chapter restates the aim, summarises the thinking behind it, answers the research questions, and suggests ideas for further research.

### ***9.1 What this research aimed to do, and why***

The aim of this thesis is to enable a better understanding of how business power influences government policy decisions when there is conflict between business and public health objectives, and thereby to support more effective public health advocacy. The author's motivation to examine this arose from experience working for a New Zealand NGO. Efforts to persuade the Government to take population-level actions to reduce obesity and type 2 diabetes seemed always to be thwarted by food industry power. A case study of the Review of Food Labelling Law and Policy (the Review) was used as the means of seeking effective ways of countering industry power. The author's interest was not so much in how to achieve food labelling that might improve population health as in how to counter industry power across the whole spectrum of public health issues concerning industry products and practices that damaged population health.

The Review, which reported in 2011, took place in Australia but also affected New Zealand. The goal of public health advocate during and after the Review was to achieve the implementation of an interpretive front-of-pack nutrition labelling scheme (FoPL). This intervention was advocated by public health organisations, but opposed by parts of the food industry which were concerned that some of their products would be categorised as less healthy with interpretive labels displayed on their packaging.

The research questions took into account the knowledge in 2010 that FoPL would be an issue of major interest for public health, and that public health wishes to see an

interpretive FoPL system introduced would be opposed by the food industry. The research questions were:

- 1 Which food industry, public health and government positions on front-of-pack nutrition labelling issues were considered as part of the Review, and how were these positions reflected in Review outcomes?
- 2 Which factors influenced government decisions about front-of-pack nutrition labelling during the Review and the subsequent development of the Health Star Rating system, and how were the decisions influenced by these factors?
- 3 What can be learned from the case study about how to ensure better public health outcomes from future government decision-making when business and health interests conflict?

These questions were addressed by first reviewing the literature on business power (Chapter 3), followed by development of a framework for distinguishing different aspects of business power (Chapter 4), and a literature review of business practices used when products were under threat from public health advocacy (Chapter 5). The study's results were reported in Chapter 6 (the context, origins, operating and findings of the Review) and Chapter 7 (the response to the Review recommendations by governments in Australia and New Zealand). The Discussion (Chapter 8) considered each research question in turn.

## ***9.2 The findings and implications of the case study***

The findings on each of the three research questions are summarised in in turn below.

### **9.2.1 Stakeholder positions and review outcomes (Research Question 1)**

#### ***9.2.1.1 Stakeholder positions***

Food industry (generally food manufacturers), public health and government positions were considered with respect to two issues. First was whether FoPL systems should be interpretive, indicating simply, clearly and 'at a glance' on product labels whether the contents were healthier or less healthy than other products. Second was whether FoPL labels should be voluntary or mandatory on packaged foods. The food industry wanted voluntary, non-interpretive labelling, and advocated their own Daily Intake Guide (DIG)

scheme. Public health and consumer organisations wanted mandatory, interpretive labels, and almost unanimously supported a traffic light system (TLS) as the best option.

A Ministerial Council (later Forum), with responsibility for food regulation in both Australia and New Zealand, represented the collective view of ten jurisdictions: the Australian and New Zealand governments, and the governments of the six Australian States and two Territories. The Council, prior to the Review in 2008, had expressed support for interpretive labelling without specifying whether this should be voluntary or mandatory.

The Review Panel recommended, in February 2011, that an interpretive FoPL scheme be introduced, and that this should be a TLS. The Panel recommended, in general, that the TLS be voluntary, the main reason appearing to be because they thought a mandatory scheme would not be acceptable to governments given regulatory policies in place aimed at minimising industry regulation.

In December 2011 what had now become the Ministerial Forum released its response to the Panel's report. The Forum rejected a TLS and instead announced plans to develop and implement an interpretive system. In June 2013 the Forum announced that a new interpretive scheme, the Health Star Rating (HSR) system, would be introduced. It would be voluntary at first, but would become mandatory if, after two years, uptake by the food industry was found to be unsatisfactory. When the HSR system was adopted in June 2014, however, the Forum extended the implementation period from two years to five, with less clarity as to whether it would be made mandatory if the food industry had not sufficiently implemented it after the five years.

#### *9.2.1.2 Summary of outcomes*

In the period from the start of the Review in 2010 until June 2018 the food industry had three wins: the rejection of a TLS by the Panel, the acceptance by the Forum in June 2014 that their non-interpretive DIG scheme could continue to be used together the HSRs, and the decision that the HSR system would be voluntary for five years from that date. Their loss was that the interpretive HSR system was to become the government-

supported FoPL scheme, and that they were in danger of having it become mandatory if they failed to take it up to the satisfaction of the Forum.

Public health groups had two losses: a TLS, their preferred option at least initially, was rejected, and the HRS, at least as first implemented, was voluntary. They had a clear win in that an interpretive system had been implemented, with some prospect of it becoming mandatory. Overall, this was the most important outcome for both parties. The contention in this thesis is that it favoured public health more than food manufacturers.

Many public health advocates would, however, be reluctant to call this a win for public health. Delays in the full implementation of the HSR system, because it has been voluntary, means that an opportunity has been lost to reduce the burden of obesity and non-communicable diseases.

Further, public health researchers and advocates had put a great deal of resources into achieving an interpretive FoPL system over the last decade, yet many would not rate FoPL as being in the first rank of interventions most likely to achieve a significant increase in healthy eating. These resources could instead have been applied trying to achieve other, potentially more effective, interventions.

### **9.2.2 Factors influencing government decisions about FoPL (Research Question 2)**

Factors influencing Review outcomes were discussed under each of the five aspects of power identified in Chapter 4 (agency, investment, network, ideological and institutional power). The main conclusion was that both public health groups and the food industry had substantial institutional power. For public health this resulted from the role taken by the Ministerial Council, later called Ministerial Forum. The food regulatory environment in both Australia and New Zealand, on the other hand, favoured food manufacturers led by the Australian Food and Grocery Council (AFGC). The relative power of the Forum's wish to implement an interpretive FoPL system and the food regulation policy environment, it was concluded, was the main factor influencing the wins and losses for each stakeholder.

Ideological, and probably investment, power played a role in shaping the institutional context in which decisions about FoPL were made. Network and agency power appeared to have played lesser roles.

#### *9.2.2.1 Institutional power and the role of ideology*

The regulatory policy environment (an institutional arrangement) was a constant influence throughout the Review. In both Australia and New Zealand regulatory policies were designed to minimise regulation in order to facilitate business activity. This made the mandatory implementation of a FoPL scheme more difficult. Ideological power favouring business, resulting from the influence of neoliberalism on political developments in Australia and New Zealand in recent decades, played a large role in shaping the regulatory environment.

The regulatory policy environment arguably provides the best single explanation as to why the mandatory FoPL system sought by public health advocates has not, at least by 2018, been achieved. This does not mean, however, that it can be concluded that institutional power was the most important aspect of power influencing Review outcomes. An alternative conclusion would be that ideological power was the more important because of its role in shaping the regulatory environment. It would be a mistake, however, to focus on debating this, as each explanation operates at a different level of analysis, and suggests different approaches to improving population health. A focus on institutional power might lead to advocacy to change current regulatory policy, while a focus on ideological power could mean attempting to influence widespread ideas about the role of business in society. Viewing the position through both institutional and ideological lenses (Chapter 3) may well be needed to shift the playing field more towards a concern for improving population health.

#### *9.2.2.2 Another institutional arrangement: membership of the Council/Forum*

Another institutional arrangement of great importance for FoPL decisions was the membership of the Ministerial Council/Forum with its ongoing support for interpretive labelling. This gave substantial institutional power to public health. The key to this power

appeared to be the dominance of health ministers on the Forum. The balance between the number of Forum Ministers from left-leaning and right-leaning jurisdictions also had an influence at particular points, shifting the balance of ideological power between the food industry and public health. Ideological power, however, appeared to have a minor influence on the Forum's FoPL decisions compared with the predominance of health ministers, irrespective of the ideological position of their individual jurisdictions.

#### *9.2.2.3 Other aspects of power*

Network power was particularly important for public health. This was achieved through the forming of a FoPL policy community in Australia comprising public health organisations and consumer organisation Choice. This community substantially increased network power for public health groups, having a substantial influence on the Panel's recommendations and the development of the HSR system.

Agency power was exercised successfully by the public health policy community in influencing the Panel's recommendations, and by the food industry through lobbying with some apparent success at particular points. Compared to the other, contextual, aspects of power, business practices appeared to have a lesser impact on FoPL decisions. There may have been, however, business practices that had some influence that were not discovered in this case study. This may mean that business agency power was greater than indicated here.

Investment power was probably influential in helping to shape the regulatory policy environment.

#### *9.2.2.4 Conclusion*

It is concluded that the increase in public health institutional power because of the direction set by the Forum probably had a greater impact than the disadvantage for public health of the regulatory policy environment. A government-led interpretive FoPL scheme (the HSR system) has been implemented in Australia and New Zealand. This will remain voluntary until at least a five year Review in 2019. The Forum's history, and its

composition in 2018 with more left-leaning than right-leaning Lead Ministers, suggests it is committed to widespread updating of the HSR system so that it achieves its purpose of reducing unhealthy food consumption in order to improve population health. If the food industry does not deliver this without regulation, it appears likely that at some stage regulation will follow.

### **9.2.3 Implications for public health advocacy (Research Question 3)**

Eight implications for public health advocacy emerged from the study (Research Question 3). All except one (advocacy to change the location of official advice to New Zealand's Lead Minister on the Ministerial Forum) apply more broadly, and particularly to issues where population health is detrimentally affected by business practices.

The implications for public health advocacy arising from this study are:

First, public health advocates need to seek changes to the current, pro-business regulatory policy environment in both Australia and New Zealand.

Second, an attempt should be made to change the framing around regulatory policy from 'the regulatory burden on industry' to 'the industry burden on health'.

Third, New Zealand public health advocacy is needed to persuade Government that advice on food regulation needs to be moved out of the Ministry for Primary Industries with its focus on economic development, ideally into the Ministry of Health. The Lead Minister on the Forum governing food regulation is a health minister for eight of the nine Australian jurisdictions.

Fourth, forming and maintaining public health policy communities can increase power to influence government decisions. The FoPL policy community in Australia has continuing work to do, and a similar community is needed in New Zealand, with the ideal being a single FoPL policy community across both countries. This is important not only in relation to FoPL, but applies to all public health policies where there are joint institutional arrangements between Australia and New Zealand.

Fifth, building and maintaining relationships with key politicians is important; sixth, collaborative arrangements involving working with industry should be considered under suitable circumstances; seventh, flexibility in changing what is advocated can be useful in response to changing political environments; and finally, divisions within industries should be noted as possible opportunities to advance public health goals.

### **9.3 Further research**

Suggestions here focus on assisting public health advocates to better challenge industry when products or services are detrimental to public health. These suggestions relate back to the implications of this thesis for public health advocacy (s8.4). These suggestions for further research are numbered to match the numbering in the list of implications.

1. A review of the international literature on regulatory policy approaches that best promote population health and welfare would assist public health advocates seeking a change to the regulatory policy environments in Australia and New Zealand.
2. Research on how best to frame the role of the regulation of business activity in society (from, for example, the 'regulatory burden on industry' to the 'industry burden on health') would also help here.
3. It would be useful, in support of advocacy for the relocation of food policy advice in New Zealand from the Ministry for Primary Industries into the Ministry of Health, to provide a fuller account of the history of the location of this advice and the apparent effects of this on the nature of the advice provided. Such a study would need to include looking at government strategic and planning documents as back at least as far as 2002, together with interviews of key players.
4. The Australian FoPL policy community played a significant role in the Review, and in the development of the HSR system. The forming of this community provides



a useful model from which much that could assist public health advocacy could be learned. Several members of this community were key informants for this study. They were, however, interviewed prior to the development of the HSR system. A number of the policy community members were also heavily involved in the development process, about which there is little publicly available information. A qualitative study based on interviews with community members is likely to provide valuable insights into the strengths and limitations of the approaches the Australian FoPL policy community adopted. This could assist those looking to form policy communities, or improve the functioning of existing communities, seeking changes to government policies in other areas of public health. A literature review of existing public health policy communities seeking to challenge industries with products damaging to population health could also provide valuable information.

#### **9.4 *A final word***

Australia and New Zealand, as a result of the Review of Food Labelling Law and Policy and introduction of the Health Star Rating system, are now better positioned to use food labelling as part of the toolkit for improving population health through better nutrition and reducing the incidence of non-communicable diseases. Nevertheless, progress in effectively implementing the system has been substantially slowed by food industry resistance. This resistance will continue. Many New Zealanders and Australians will, as a result, spend more time than they should in an environment where healthy food choices are not as easy as they should be, and where food manufacturers are not sufficiently motivated to move the balance of their production from less healthy to healthier products. While there has been some progress, there is a long road ahead before FoPL makes the contribution it should to improving population health.



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# Appendix 1

## ***Study 1: Coding protocol for content analysis of submissions***

This protocol consists of:

- 1A: Information about the project given to the second coder
- 1B: General coding instructions provided to the second coder
- 1C: A glossary of terms used in some of the submissions
- 1D: The final coding scheme used for producing the results.

### ***A: Information about the project (document given to the second coder)***

The project is concerned with analysing the content of submissions to the Review of Food Labelling Law and Policy currently being conducted in Canberra. The outcomes of this review affect both New Zealand and Australia.

A number of issues from the review have been coded by the principal investigator (John White). In studies such as this it is usual for a sample of the coding to be repeated by at least one other person to protect against any bias (conscious or unconscious) affecting the principal investigator's coding. The person doing this repeat of some of coding is called the "second coder".

It is important that all communications between the principal investigator and the second coder are consistent with the coding protocol.

This protocol consists of:

- This document
- Coding instructions
- A glossary of terms used in some of the submissions
- A coding scheme that will be progressively updated as a result of feedback during coder training.

The principal investigator will not answer questions about the purpose of the research until all coding has been completed. This is to reduce the likelihood of the second coder being influenced by what they think the principal investigator might be looking for or hoping to find.

A series of issues is to be coded by the second coder. For each issue there will be one or more training sessions, with practice on a sample of submissions. This will involve discussion between the principal investigator and the second coder to clarify the coding instructions. It is likely that the coding instructions will be modified to improve clarity based on feedback from the second coder.

If there is substantial modification to the coding instructions the principal investigator will recode any submissions affected in the original coding at this stage.

Training ends when both the principal investigator and second coder are confident that the second coder fully understands the coding instructions.

After the training ends the second coder will code the submissions in the order specified by the principal investigator (randomised order). The second coder will do this coding solely from the coding instructions.

### **Note on submissions**

Each submission to be coded is printed as a separate Word document. These range in length from one sentence to more than 10 pages.

The original submissions are generally much longer documents than the documents used for coding. This is because text unrelated to the issues of interest in the investigation has been omitted. This was done to make the coding task more manageable, both for the principal investigator and second coder.

The submissions have had identifying information removed. This usually takes the form of the replacement of the submitter's name with Xxxxx.

Many submissions were converted from pdf format to Word using Optical Character Recognition (OCR) software. This sometimes results in anomalies such as changes in font in the middle of sentences, misaligned bullet points, or failure of the OCR software to correctly read a character (e.g. %D1 instead of %DI).

***B: Coding instructions (document given to the second coder)***

Before commencing a coding session, carefully read the specific instructions for the variable being coded.

Code the variable on what the submission as a whole has to say. Unless the code for a submission is unambiguously clear, the whole document for a submission must be read carefully.

Record your coding decision by entering its numeral against the submission number on the coding sheet.

Submissions are printed double-sided. Remember to check on the back of the last sheet to make sure you have seen all the text.

As you code each submission mark the relevant piece or pieces of text that you use to derive the code.

After completing the coding, no earlier than the next day carefully re-read the specific coding instructions for the variable being coded, then check that you are happy with the codes you assigned, changing any if required. (This is where marking on the text on which you based your initial coding will be helpful.)

***C: Glossary (document given to the second coder)***

**FOP** Front of pack (on a food package, can etc.)

**FOPL** Front of pack labelling

**Interpretive FOP system** FOP system that interprets factual nutrition information for the consumer by indicating the extent to which a product should form part of a healthy diet.

**Daily Intake Guide** Non-interpretive FOP system used on some food packages at present.

**DIG** Daily Intake Guide system

**Percentage Daily Intake** Information provided as part of the DIG system.

**%DI** Percentage Daily Intake

**Guideline Daily Amount** Non-interpretive FOP system used in the UK that is similar to **DIG**

**GDA** Guideline Daily Amount

**Nutrition Information Panel** Panel containing detailed nutrition information typically found on the or back of food packages

**NIP** Nutrition Information Panel

## ***D: Final coding scheme***

### **Variable:   *V1a – Introduction of a traffic light system (coded)***

**Proposition:**   Some form of traffic light front-of-pack nutrition labelling system should be introduced

#### **Introduction**

This variable applies in cases where some form of traffic light or colour-coded front-of-pack (FOP) nutrition labelling system is referred to in the submission.

A traffic light or colour-coded FOP nutrition labelling system uses green, amber and red symbols to indicate the extent to which a food should form part of a healthy diet. Its purpose is ‘health promotion’: in this case to promote more healthy eating.

Some submissions support multiple traffic light systems with lights for “negative” nutrients such as saturated fat and salt. Others support a single traffic light system with the colour based on nutrient profiling, which takes into account all nutrients in a food (both “positive” and “negative”). Both systems, and variations on these, count as traffic light systems for the purpose of coding this variable.

**NVivo search terms:** “traffic”; variations on “colour coded”

#### **Codes**

- 1      Directly or implicitly agree
- 2      Directly or implicitly disagree
- 7      Neither agree nor disagree (but refers to a traffic light system)
- 9      Not applicable (does not refer to a traffic light system)

## Decision rules

*What counts as a “traffic light FOP nutrition labelling system”?*

Any reference to traffic light labelling, a traffic light system, scheme etc. or a colour-coded FOP system, scheme etc. is to be taken as reference to a traffic light FOP nutrition labelling system for the purpose of coding this variable. The only exception is when the submission only refers to traffic light colours somewhere other than on the front of a label, such as in the Nutrition Information Panel (NIP).

This means that, apart from the exception just noted, any reference to traffic lights or colour coding:

- in relation to nutrients in a food OR
- in relation to the healthiness of a food OR
- in relation to food labelling OR
- in relation to the front of packs OR
- in the UK (United Kingdom)

is to be taken as reference to a traffic light FOP nutrition labelling system for the purpose of coding this variable.

*What counts as “should be introduced”?*

Unless the submission as a whole indicates otherwise, the following are to be taken as implying that a traffic light system should be introduced:

- A traffic light system should be mandatory or compulsory
- A traffic light system is needed ...
- A traffic light system should be used ...
- A traffic light system is the best approach ...
- The Review Panel should recommend [to Ministers] that a traffic light system be introduced
- Xxxxx recommends adoption of a traffic light system ...
- Xxxxx would like to see a traffic light system ...
- Xxxxx calls for FSANZ to use a traffic light system ...
- I am in favour of a traffic light system
- I support a traffic light system.



The above list is not exclusive, and is intended to help build a picture as to the sort of statements that can be taken to imply support for introduction of a traffic light system.

Statements like “a FOP scheme such as a traffic light system should be introduced” do not alone imply that a traffic light system should be introduced.

Statements about what a traffic light system could or can do, or would or will do, whether positive or negative, are alone insufficient to assume support for or opposition to introduction of a traffic light system.

Statements recommending that introducing a traffic light system should be considered are alone insufficient to assume support for introduction of a traffic light system.

Statements listing advantages or disadvantages of traffic light systems are alone insufficient to assume support for or opposition to introduction of a traffic light system.

Submissions supporting a traffic light system that refer to uses of the lights in relation to more than healthy eating (e.g. in relation to genetic modification) are coded ‘1’ providing that healthy eating is included.

Opposition to the UK traffic light system, rather than traffic light systems in general, is coded ‘7’, as it is possible to oppose the UK system but to support other nutrition labelling schemes using traffic lights.

#### *References to interpretive and non-interpretive systems*

Opposition to “interpretive” systems, or support for “non-interpretive” systems, is coded ‘2’. This is because a traffic light system is interpretive.

Statements supporting an interpretive system are alone insufficient to code as ‘1’. This is because a traffic light system is not the only option for interpretive schemes.

Submissions referring to interpretive or non-interpretive systems, but not referring to a traffic light or colour-coded FOP system, are coded ‘9’. This is because submissions must somewhere refer to a traffic light or colour-coded system to be coded other than ‘9’.

### *References to health promotion*

‘Health promotion’ in the context of the submissions refers to activities designed to promote healthy eating.

Because the purpose of a traffic light system is to promote more healthy eating, opposition to the use of food labels for health promotion should be taken as opposition to the introduction of traffic lights and coded ‘2’ unless the submission as a whole indicates otherwise.

Statements supporting use of food labels for health promotion are alone insufficient to code as ‘1’. This is because a traffic light system is not the only option for using food labels for health promotion.

### *Comparisons between DIG and traffic light systems*

Submissions stating or implying that a DIG system (see Glossary) is superior to a traffic light system are coded “2”, since DIG is non-interpretive.

Stating or implying that a traffic light system is superior to a DIG system is alone insufficient to code as ‘1’. This is because it is possible to hold this position and to want neither system introduced.

### **Examples of direct or implicit agreement (Code = 1)**

The populations of Australian and New Zealand deserve a clear, easily interpretable (i.e., colour coded), mandatory and uniform FOP food labelling system.

Xxxxx advocates for a labelling system similar to the UK Traffic Light labelling system.

There are lots of things I would like to see added to food labelling (e.g. traffic lights etc...)

Symbols are extensively used in Road Traffic management; we should aim for similar acceptance in respect of food labelling.

The traffic light system should be widely trialled and public education undertaken ... This should assist parents to make healthier food choices for their families. (*While ‘widely*

*trialled’ may fall short of ‘should be introduced’, the accompanying text is sufficient to imply that this is what the submitter wants.)*

The disadvantaged need FOP labels they will understand at a glance without any explanation. The only FOP label that meets these criteria is traffic lights. *(If introduced for the disadvantaged a traffic light system would be effectively introduced for all.)*

*In response to Q12: Should specific health warnings (e.g., high level of sodium or saturated fat per serve) and related health consequences be required?* There should also be a colour warning appended to this warning, as per a so-called ‘traffic-light’ system.

*In response to Q12: Should specific health warnings (e.g., high level of sodium or saturated fat per serve) and related health consequences be required?* Required for all processed food products, as per the UK “traffic light” system.

#### **Examples of direct or implicit disagreement (Code = 2)**

For providing general information about food which is applicable across the healthy adult population Xxxxx considers non-interpretative approaches – such as the DIG scheme – are better than interpretive approaches such as “traffic lights”. *(This should be coded ‘2’ whether or not traffic lights are mentioned – see decision rules about references to interpretive or non-interpretive systems above.)*

The Xxxxx supports the non-interpretative approach of the DIG. *(See decision rules about references to interpretive or non-interpretive systems above.)*

Traffic lights do not integrate well with a general health policy framework.

The Traffic Light system of labelling is too simplistic to provide any real benefit.

The traffic light system is inadequate, overly simplistic and unfairly penalises some healthy foods.

A traffic light scheme will do more harm than good.

It is not the role of FSANZ to determine which of the systems is preferable or to impose any system. The traffic-light system does not have the consumer response claimed by supporters of the system.

Colour-coded systems mislead as they arbitrarily categorise foods.

There is little evidence that traffic light labelling has any impact on consumer purchasing behaviour, and, in this situation, the cost to industry in changing existing labelling would not be justified.

### **Examples of “Neither agree nor disagree” (Code = 3)**

Evidence suggests that labelling formats such as the ‘traffic light’ system can influence consumers’ choices towards more healthy products. *(Citing evidence for or against a traffic light system is alone insufficient for assuming support for or opposition to introduction.)*

Consumers want even simpler labelling with traffic lights. *(Statements about consumer wants or needs are alone insufficient for assuming support for or opposition to introduction of a traffic light system.)*

Systems that involve visual devices such as traffic light colours are more effective in helping consumers to make informed choices about the food they purchase. *(Statements about effectiveness are alone insufficient for assuming support for or opposition to introduction of a traffic light system.)*

A traffic light system is useful in this regard ...

If a traffic light system was to be introduced ...

Consideration should be given to the use of a traffic light labelling system.

The [UK traffic light system] scheme has a number of difficulties as it is limited in scope, interpretation varies across population groups, there is lack of clarity about the action to be taken by the consumer and it does not focus on the entire food or where that food

sits within the total diet. *(Rejection of the UK system does not imply rejection of all traffic light systems, some of which attempt to address these issues.)*

Easily understood guidance to consumers on labels, perhaps the 'traffic light system' [could support health promotion initiatives].

I suggest that using traffic light colours on the nutrition information panel to aid consumer interpretation of the key nutrient levels that influence health would be a huge step forward, whether or not it is accompanied by a front of pack overall traffic light guide. *(The nutrition information panel is not on the front of the pack.)*

Health promotion initiatives should be kept entirely separate from essential food labelling, as such initiatives are fraught with puffery, ambiguous messages, and irrelevant claims. The use of the 'traffic lights' system could, however be an aid to consumers. *(The reference to 'health promotion initiatives' seems to be to health claims made by food manufacturers rather than a traffic light system.)*

In response to Q8: *In what ways can food labelling be used to support health promotion initiatives?* A traffic light system agreed by Reform Commission and the National Preventative Health Strategy. *(It is possible to agree that a traffic light system would support health promotion without agreeing that traffic lights should be introduced.)*

In response to Q23: *How best can the information on food labels be arranged to balance the presentation of a range of information while minimising information overload?* This can be achieved best through a traffic light system. *(It is possible to agree that a traffic light system would balance presentation etc. without agreeing that traffic lights should be introduced.)*

In response to Q23: *How best can the information on food labels be arranged to balance the presentation of a range of information while minimising information overload?* Use the traffic light system for key nutrients. *(It is possible to agree that a traffic light system would help identify key nutrients without agreeing that traffic lights should be introduced.)*

*In response to Q24: In what ways can consumers be best informed to maximise their understanding of the terms and figures used on food labels? Use of traffic lights for each component of the food make up. (It is possible to agree that a traffic light system would maximise consumer understanding without agreeing that traffic lights should be introduced.)*

*In response to Q25: What is an appropriate role for government in relation to use of pictorial icons on food labels? The government regulatory body can insist on a uniform icon i.e.: traffic light symbol (currently being used in the UK). (If this said the government should this would be coded '1', but can is alone insufficient.)*

**Variable: V1b – Support for other submissions**

Submissions fully supporting other submissions with positions on the introduction of a traffic light system in V1a

*V1b is used for computing V1c*

Five submissions stated that they fully supported another submission that had a position on V1a (V1a = 1 or 2). All five supported s529, the submission from the Australian Food and Grocery Council (AFGC). The AFGC submission was opposed to the introduction of a traffic light system (V1a = 2).

**Codes**

- 1 Fully supports submission 529 (AFGC)
- 9 All other submissions

**Variable:** *V1c – Introduction of a traffic light system (computed - final)*

**Proposition:** Some form of traffic light front-of-pack nutrition labelling system should be introduced

This is the version of V1 used in the Results.

#### **Codes**

- 1 Directly or implicitly agree
- 2 Directly or implicitly disagree
- 7 Neither agree nor disagree (but refers to a traffic light system)
- 9 Not applicable (does not refer to a traffic light system)

#### **Computing rules**

If V1a = 1 then V1c = 1

If V1a = 2 then V1c = 2

If V1a = 7 then V1c = 7

If V1a = 9 and V1b = 1 then V1c = 2

If V1a = 9 and V1b = 9 then V1c = 9

**Variable:** *V2a – A traffic light system as a good approach (coded)*

**Proposition:** Some form of traffic light system would be a good approach to front-of-pack nutrition labelling

#### **Introduction**

This variable applies in cases where some form of traffic light or colour-coded front-of-pack (FOP) nutrition labelling system is referred to in the submission, but the submission neither agreed nor disagreed that a traffic light system should be introduced (V1c = 7).

A traffic light or colour-coded FOP nutrition labelling system uses green, amber and red symbols to indicate the extent to which a food should form part of a healthy diet. Its purpose is 'health promotion': in this case to promote more healthy eating.

Some submissions support multiple traffic light systems with lights for "negative" nutrients such as saturated fat and salt. Others support a single traffic light system with the colour based on nutrient profiling, which takes into account all nutrients in a food (both "positive" and "negative"). Both systems, and variations on these, count as traffic light systems for the purpose of coding this variable.

**NVivo search terms:** "traffic"; variations on "colour coded"

### **Codes**

- 1      Directly or implicitly agree
- 2      Directly or implicitly disagree
- 7      Neither agree nor disagree

### **Decision rules**

*What counts as a "traffic light FOP nutrition labelling system"?*

Any reference to traffic light labelling, a traffic light system, scheme etc. or a colour-coded FOP system, scheme etc. is to be taken as reference to a traffic light FOP nutrition labelling system for the purpose of coding this variable. The only exception is when the submission only refers to traffic light colours somewhere other than on the front of a label, such as in the Nutrition Information Panel (NIP).

This means that, apart from the exception just noted, any reference to traffic lights or colour coding:

- in relation to nutrients in a food OR
- in relation to the healthiness of a food OR
- in relation to food labelling OR
- in relation to the front of packs OR
- in the UK (United Kingdom)



is to be taken as reference to a traffic light FOP nutrition labelling system for the purpose of coding this variable.

A system combining both traffic light colours and percentage daily intake is not considered a traffic light system for the purpose of coding this variable.

#### *9.4.1.1 What counts as agreeing?*

Unless the submission as a whole indicates otherwise, the following are to be taken as implying that a traffic light system is a good approach:

- A FOP scheme such as a traffic light system should be introduced
- A traffic light system should be considered for introduction (but not that both traffic lights and DIG (%DI) should be considered for introduction).

Statements similar to the following indicate that the submitter thinks that some form of traffic lights would be a good approach, and should be coded '1' unless indicated otherwise elsewhere in the submission. A traffic light system, or a system such as traffic lights, would or could:

- be effective in promoting healthy eating
- help consumers understand which products are more healthy
- help people make more healthy, appropriate or informed food choices
- help consumers interpret the information on food labels
- be useful in helping people make a quick assessment of a food.

Stating or implying that a traffic light system is superior to a DIG (%DI) system should be coded '1' unless otherwise indicated elsewhere in the submission. This includes submissions citing research evidence that traffic lights are superior to DIG.

#### *9.4.1.2 What counts as disagreeing?*

Submissions that make at least one negative statement about traffic light systems and no positive statements are coded '2' unless indicated otherwise elsewhere in the submission. An exception is where a negative statement is peripheral or minor, such as that traffic light labelling is not so good for red/green colour blind people.

### **Examples of direct or implicit agreement (Code = 1)**

Front of pack labelling is appropriate for health ticks, traffic lights and icons.

Colour coding and other interpretive systems can be used to simplify consumer interpretation.

Traffic light type labels would enable junk food to be clearly identified

The simplest way to inform consumers to maximise their choice of healthy foods may not be understanding the terms and figures used on labels, but rather to use the traffic light signal method which is far simpler and easily discerned.

Evidence suggests that labelling formats such as the traffic light system can influence consumers' choices towards more healthy products.

Red traffic light dots on confectionery and soft drinks may be beneficial and FSANZ has failed to represent the wishes and needs of the public on labelling issues including GM, trans fats, ... and traffic light labelling. *(Together these statements imply that FSANZ should be doing something about traffic lights.)*

*In response to Q24:* *In what ways can consumers be best informed to maximise their understanding of the terms and figures used on food labels? Use of traffic lights for each component of the food make up.*

*In response to Q25:* *What is an appropriate role for government in relation to use of pictorial icons on food labels? The government regulatory body can insist on a uniform icon i.e.: traffic light symbol (currently being used in the UK). (Suggesting that the government could insist on traffic lights implies the submitter believes that traffic lights is a good approach.)*

### **Examples of direct or implicit disagreement (Code = 2)**

I believe that other information options such as traffic lights ...are less accurate, less easily understandable by shoppers and more open to manipulation by the manufacturer.

Implementing some kind of visual guide such as ticks, traffic lights, keys or other symbols opens up a whole Pandora's box. *(Since a Pandora's box contains nasty surprises.)*

### **Examples of "Neither agree nor disagree" (Code = 7)**

Consumers want even simpler labelling with traffic lights. *(Statements about consumer wants or needs are alone insufficient coding as '1' or '2'.)*

If a traffic light system was to be introduced ...

I suggest that using traffic light colours on the nutrition information panel to aid consumer interpretation of the key nutrient levels that influence health would be a huge step forward, whether or not it is accompanied by a front of pack overall traffic light guide. *(The nutrition information panel is not on the front of the pack.)*

Health promotion initiatives should be kept entirely separate from essential food labelling, as such initiatives are fraught with puffery, ambiguous messages, and irrelevant claims. The use of the 'traffic lights' system could, however be an aid to consumers. *(The reference to 'health promotion initiatives' seems to be to health claims made by food manufacturers rather than a traffic light system. It is possible to agree that a traffic light system could be an add to consumers without agreeing that overall it is a good approach.)*

Easily understood guidance to consumers on labels, perhaps the 'traffic light system' [could support health promotion initiatives]. *(‘Perhaps’ is too weak a basis from which to assume the submitter agrees that a traffic light system is a good approach.)*

*In response to Q24: In what ways can consumers be best informed to maximise their understanding of the terms and figures used on food labels? Evidence is needed on which to base any recommendation. Standard format and prescribed order provide consistency, while 'high/med/low', colour coding and other interpretive systems can be used to simplify consumer interpretation. (“Evidence is needed” makes this statement too weak a basis from which to assume the submitter agrees that a traffic light system is a good approach.)*

**Variable:**    **V2b – A traffic light system as a good approach (computed)**

**Proposition:**    Some form of traffic light system would be a good approach to front-of-pack nutrition labelling

This is the version of V2 used in the Results.

#### **Codes**

- 1      Directly or implicitly agree
- 2      Directly or implicitly disagree
- 7      Neither agree nor disagree (but refers to a traffic light system)
- 9      Not applicable (does not refer to a traffic light system)

#### **Computing rules**

If V1c = 1 then V2b = 1

If V1c = 2 then V2b = 2

If V1c = 7 then V2b = V2a

If V1c = 9 then V2b = 9

**Variable: Sub-sector**

**Description:** Sub-group of sector

*Sectors are the major groupings into which submissions are classified.*

*Each sub-sector is unique to a sector.*

*For additional information used to assign submissions to a sub-sector see “Notes on sub-sectors” column in the Master worksheet.*

**Decision rules**

Each submission can be assigned to only one sub-sector. If it meets the criteria for more than one it should be coded to the sub-sector mentioned first or most predominantly unless this is specifically excluded under the sub-sector descriptions below.

As an example, an organisation stating it was involved in manufacturing and importing food would be coded as ‘manufacturing’. An organisation stating that it was involved in importing and manufacturing would be coded as ‘other food industry’.

An organisation listing 6 primary producers and 5 food manufacturers among its members would be coded as ‘primary production’. An organisation listing 5 primary producers and 6 food manufacturers among its members would be coded as ‘manufacturing’.

The following organisations are coded ‘other’ if their main focus is:

- Country of Origin labelling
- Genetic modification
- Protection of the environment (e.g. palm oil production and orang-utans)
- Food irradiation
- Nanotechnology

## **HEALTH SUB-SECTORS**

### **Alcohol misuse (Code = alc)**

Groups or individuals whose submissions focus on preventing or reducing alcohol misuse. Submissions in this sub-sector do not address interpretive labelling, health claims (other than with respect to alcoholic beverages) or away-from-home foods. Assignment to this sub-sector takes preference over assignment to other health sub-sectors.

### **Health Academic (Code = acad)**

Individuals with an academic position in a health-related field at a university, or groups of such individuals.

### **Nutrition-related disease (Code = dis)**

Groups concerned with the prevention, management or treatment of nutrition-related diseases, including cardiovascular disease, cancer or kidney disease. Groups specifically concerned with obesity prevention are included here.

### **Nutrition (Code = nut)**

Groups or individuals professionally concerned with nutrition from a health perspective, including dietitians. Academics concerned with nutrition are included under “Academic” and not here.

### **Other health (code = ohealth)**

Groups or individuals providing health-related goods or services that cannot be classified into another health sub-sector.

## **FOOD INDUSTRY SUB-SECTORS**

For the purpose of this study the “food industry” includes foods and beverages except for alcoholic beverages.

### **Manufacturing (Code = man)**

Includes companies or associations providing inputs or services to food manufacturers, such as food technology, enzyme products or research

Includes beverage manufacturers and bottlers, and their associations

Includes individuals holding positions in food and beverage manufacturing companies and associations

Both the Australian and New Zealand Food and Grocery Councils are included, as these are both peak groups for food manufacturers.

Includes manufacturers of a range of products that includes food.

Includes organisations with a primary focus on processing milk into dairy products.

Associations representing food manufacturers, or having food manufacturers as their members, are included here.

### **Primary production (Code = pp)**

Primary production includes growing food, raising animals for food, and fishing.

Included are:

- farmers, and organisations representing farmers.
- companies engaged in commercial fishing and organisations representing commercial fishing interests.
- organisations providing inputs for primary producers such as fertiliser, seeds or pesticides, or research.
- farmers’ markets, since these involve direct sale by producers rather than by a retailer.

- organisations and people (including farmers) with a primary focus on producing milk from animals.
- associations representing primary producers, or having primary producers as members.

### **Retail (Code = retail)**

Retailers are organisations whose primary business is selling food, including restaurants.

Associations representing food retailers, or having food retailers as their members, are included here.

### **Other food industry (Code = ofi)**

Includes food and beverages importers and suppliers, and organisations or individuals who are associated with the food and beverages industry but do not meet the criteria for inclusion under manufacturing, primary production or retail.

## **GOVERNMENT SUB-SECTORS**

### **Central Government (Code = cent)**

The New Zealand Government and Australian Federal Government, including departments and agencies. Includes FSANZ (a bi-national government agency).

### **State and Territory governments (Code = state)**

Australian state or territory governments, including departments and agencies.

### **Local government (Code = local)**

Local governments (of cities etc.) or parts of local governments, or organisations established to provide services to local governments.



### **Notes on government sub-sectors**

A government department referred to as “Australian” and not referring to a state or territory will be a federal department.

“Territories” are Northern Territory and Australian Capital Territory (ACT).

Members of state or national parliaments and local politicians parties are coded ‘other’.

Political parties (including local branches) are coded ‘other’.

### **ADVERTISING INDUSTRY SUB-SECTOR**

The Advertising Industry sector contains only one sub-sector.

#### **Advertising industry (Code = adv)**

Advertising associations or research groups.

### **CONSUMER ORGANISATIONS SUB-SECTOR**

The Consumer Organisations sector contains only one sub-sector.

#### **Consumer organisations (Code = cons)**

Comprises the Australian and New Zealand national consumer organisations, and Australian state consumer organisations.

### **OTHER SUB-SECTOR**

The “Other” sector contains only one sub-sector.

#### **Other (Code = other)**

All groups or individuals that cannot be classified into any other sub-sector.



## Appendix 2

### **Study 2: Examination of submissions to the Review of Food Labelling Law and Policy for evidence of food industry practices**

This appendix records details of searches of submissions on the Review website as at 3 January 2011. The purpose was to look for evidence of selected business practices used by the food industry in submissions.

Searches were conducted to find evidence relating to use of the following practices in food industry submissions:

- promoting self-regulation
- diverting attention to physical activity
- stressing personal responsibility for making healthy food choices
- emphasising freedom of choice in food selection
- promoting education as the main way to improve nutrition
- referring to the ‘nanny state’
- describing opponents in ways that might undermine their credibility
- claiming there are no ‘bad’ foods.

The search terms, search criteria and (where required) codes and coding rules for each of these practices are described below.

#### ***A Promoting self-regulation***

##### **Search terms**

Each word in the any of the following word pairs (e.g. the words “self” and “regulation”) found within five words of each other:

- self AND regulation
- self AND regulatory
- industry AND regulation
- industry AND regulatory

OR any of the following words anywhere in the text:

- voluntary
- mandatory
- mandated

### **Search criteria**

The submission included one or more statements indicating support for or opposition to self-regulation of FoPL, and/or support for or opposition to self-regulation in general.

Excluded:

- neutral statements referring to a number of approaches to regulation that might be used, depending on circumstances
- statements referring to self-regulation only with respect to specific issues other than FoPL, for example genetic modification, nanotechnology, animal welfare, country of origin labelling.

### **Codes**

- 1 Supported self-regulation and/or opposed statutory regulation
- 2 Opposed self-regulation and/or supported statutory regulation

### **Coding rules**

Submissions were coded 1 if they did any of the following:

- included statements indicating support for self-regulation in general, food labelling in general, or FoPL specifically

- included statements indicating opposition to statutory regulation in general, food labelling in general, or FoPL specifically
- listed at least one advantage and no disadvantages of self-regulation
- listed at least one disadvantage and no advantages of statutory regulation

Submissions were coded 2 if they did any of the following:

- included statements indicating support for statutory regulation in general, food labelling in general, or FoPL specifically
- included statements indicating opposition to self-regulation in general, food labelling in general, or FoPL specifically
- listed at least one advantage and no disadvantages of statutory regulation
- listed at least one disadvantage and no advantages of self-regulation.

Submissions supporting co-regulation in addition to self-regulation were coded 1, with those supporting co-regulation in addition to statutory regulation coded 2.

Support for mandatory labelling was treated as opposition to self-regulation, while opposition to mandatory labelling was treated as support for self-regulation.

## ***2B Diverting attention to physical activity***

### **Search terms**

Any of activ\*, fit\*, or exercis\*

Note: an asterisk (\*) acts as a substitute for zero or more characters, thus 'activ\*' would find active or activity.

### **Search criteria**

The submission included at least one reference to physical activity in relation to health.

## ***C Stressing personal responsibility for making healthy food choices***

### **Search terms**

A word preceding the AND within five words of a word following the AND in any of the following:

- person(s) AND (responsible OR responsibility)
- people AND (responsible OR responsibility)
- personal(ly) AND (responsible OR responsibility)
- individual(s) AND (responsible OR responsibility)
- self AND (responsible OR responsibility)
- consumer(s) AND (responsible OR responsibility)
- parent(s) AND (responsible OR responsibility)
- parental AND (responsible OR responsibility)

### **Selection criteria and codes**

The submission contained a statement or statements indicating or suggesting support for one or more of the following propositions:

- 1 Individuals are responsible for making healthy food choices, with no associated responsibility role for the food industry.
- 2 Individuals are responsible for making healthy food choices , with no mention of any associated responsibility for the food industry.
- 3 Individuals are responsible for making healthy food choices , but the food industry has associated responsibility.
- 4 Individuals cannot be held responsible for making healthy food choices.

### **Notes on selection criteria**

Restricted to choices about food, with choices about alcohol consumption excluded.

Statements suggesting a need for regulation were regarded as suggesting that the food industry has some responsibility, even if not prepared to accept it.

## ***2D Emphasising freedom of choice in food selection***

### **Search terms**

Each word in the any of the following word pairs (e.g. the words “free” and “choice”) found within five words of each other:

- free AND choice
- free AND choices
- free AND choose
- freely AND chosen

OR the following word anywhere in the text:

- freedom

### **Search criteria**

Any reference to freedom of choice in relation to food selection

## ***2E Promoting education as the main way to improve nutrition***

### **Search terms**

Any occurrence of either “educat\*” or “knowledge”

Note: an asterisk (\*) acts as a substitute for zero or more characters, thus ‘educat\*’ would find ‘education’, ‘educational’, etc.

**Search criteria**

The large number of occurrences of the search terms and the failure to find search strategies to reduce these to manageable proportions resulted in abandonment of any attempt to report on this framing.

***2F Referring to the ‘nanny state’*****Search term**

Any occurrence of the term ‘nanny’

**Search criteria**

Any reference to the ‘nanny state’

***2G Describing opponents in ways that might undermine their credibility*****Search terms**

Any of the following: activis\*, bias\*, credib\*, extrem\*, foolish, ill-advised, improper, irresponsib\*, left wing / left-wing, misguided, nazi\* (e.g. “food nazis”), neoliberal\* / neo-liberal\*, objectionable, police (e.g. “food police”), radical, right wing / right-wing, shoddy, socialis\*, unacceptab\*, unethical, unprofessional

Note: an asterisk (\*) acts as a substitute for zero or more characters, thus ‘credib\*’ would find ‘not credible’, ‘lacking credibility’, etc.

**Search criteria**

Statements describing other parties with a role in food labelling in ways that might undermine their credibility by using one or more of the search terms.



## ***2H Claiming there are no ‘bad’ foods***

### **Search terms**

Occurrences of any of the following words or phrases:

- healthy food(s) OR healthy food choices
- healthier food(s) OR healthier food choices
- good food(s) OR good food choices
- unhealthy food(s) OR unhealthy food choices
- less healthy food(s) OR less healthy food choices
- bad food(s) OR bad food choices
- poor food(s) OR poor food choices
- junk food(s)
- healthy diet(s)
- good diet(s)
- unhealthy diet(s)
- poor diet(s)
- bad diet(s)
- balanced diet(s)
- moderation (single word search)

### **Selection criteria and codes**

The submission contained a statement or statements indicating support for one or more of the following propositions:

- no foods are good or bad, or healthy or unhealthy, or healthier or less healthy
- food labelling should not depict foods as good or bad, healthy or unhealthy, or healthier or less healthy
- all foods have a place in a healthy or balanced diet.



## **Appendix 3**

### **Information Sheet to potential informants (example)**



#### **Influences on government decisions affecting public health: A case study of the Review of Food Labelling Law and Policy**

##### **INFORMATION SHEET FOR INTERVIEWEES**

Thank you for showing an interest in this project. Please read this information sheet carefully before deciding whether or not to participate. If you decide to participate we thank you. If you decide not to take part there will be no disadvantage to you and we thank you for considering our request.

##### **Nature and purpose of the project**

Interviews are being conducted as part of a larger case study of the Review of Food Labelling Law and Policy that affects both New Zealand and Australia. Information is being sought from informants in the government, health, and food industry sectors that

assists in explaining the influences shaping government decisions about front-of-pack nutrition labelling in the context of the Review. Interviews will focus on the Review Panel's recommendations that an interpretive front-of-pack nutrition labelling should be introduced, and that this should be a multiple traffic lights system. The purpose is to see what lessons might be drawn from the case study that will assist public health advocates to effectively promote policies aimed at protecting and improving population health.

### **Conduct of the project**

The project is being conducted within the Health Promotion and Policy Research Unit, Department of Public Health, University of Otago, Wellington, by John White, a PhD student in the Unit (the researcher). The project is supervised by Dr George Thomson, Senior Research Fellow, and Associate Professor Louise Signal.

### **Selection of interviewees**

Interviews are being sought from the following key players in the Review:

- senior persons within health sector and food industry organisations that made submissions to the Review which included material relating to front-of-pack nutrition labelling;
- members of the Review Panel that considered and made recommendations on submissions to the Review;
- government officials with responsibility for preparing advice on government responses to the Review Panel's recommendations on front-of-pack nutrition labelling;
- members of the Legislative and Governance Forum on Food Regulation (formerly Australia and New Zealand Ministerial Council) who have made decisions on the Review Panel's recommendations.

**Involvement of interviewees**

Should you agree to take part in this project, the researcher will make arrangements with you for a suitable time and place for an interview. The interview could take up to an hour. If you agree, the interview will be audio recorded. Otherwise the interviewer will take notes.

Please be aware that you may decide not to take part in the project without any disadvantage to yourself of any kind. You will be welcome to finish the interview at any time, or decline to answer particular questions.

**Storage and use of the data**

The project has stringent protocols approved by the University of Otago Human Ethics Committee for use and storage of audio recordings, notes from interviews, and any transcripts made from the audio recordings. Audio recordings will be copied to a passworded computer at the earliest opportunity, and then immediately deleted from the recording device. Where possible, identifying information will be removed from recordings before any transcription. Only the researcher, the supervisor, and any persons transcribing the audio recordings will have access to the data at any stage.

Data obtained as a result of the research will be retained for at least 5 years in secure storage. Any personal information held will be destroyed at the completion of the research even though the data derived from the research will, in most cases, be kept for much longer or possibly indefinitely.

The results of the research may be published and will be available in the University of Otago Library (Dunedin, New Zealand). On the Consent Form you will be given options

regarding your anonymity. Please be aware that unless you agree otherwise we will make every attempt to preserve your anonymity. However, with your consent, there are some cases where it may be preferable to attribute contributions made to individual participants. If you wished you could make any such attribution dependent on you correcting or withdrawing the information prior to its inclusion in any report or publication. It is absolutely up to you which of these options you prefer.

### **Content and conduct of the interview**

This project involves an open-questioning technique. The general line of questioning will address the ways in which your organisation made its case during the Review process about front-of-pack nutrition labelling, what you think you did right, and what you think you could have done better.

The precise nature of the questions which will be asked have not been determined in advance, but will depend on the way in which the interview develops. Consequently, although the University of Otago Human Ethics Committee is aware of the general areas to be explored in the interview, the Committee has not been able to review the precise questions to be used.

In the event that the line of questioning does develop in such a way that you feel hesitant or uncomfortable you are reminded of your right to decline to answer any particular question(s) and also that you may withdraw from the project at any stage without any disadvantage to yourself of any kind. Should you withdraw during the interview you can stipulate that the audio recording and interviewer notes made to that point are destroyed.

### **Questions about the project**

If you have any questions about our project, either now or in the future, please feel free to contact either:-

John White

and/or

Dr George Thomson

Department of Public Health

Department of Public Health

University of Otago, Wellington

University of Otago, Wellington

Telephone: (64)-4-971 5415

Telephone: (64)-4-385 5541 ext. 6040

### **Email Address:**

### **Email address:**

whijo379@student.otago.ac.nz

george.thomson@otago.ac.

This study has been approved by the University of Otago Human Ethics Committee. If you have any concerns about the ethical conduct of the research you may contact the Committee through the Human Ethics Committee Administrator (ph 64 3 479 8256). Any issues you raise will be treated in confidence and investigated and you will be informed of the outcome.





## **Appendix 4 Consent form for informants**

University of Otago Ethics Committee Reference Code: 11/293

16 December 2011

### **Factors influencing government decisions affecting public health: a case study of the Review of Food Labelling Law and Policy**

#### **CONSENT FORM FOR PARTICIPANTS**

I have read the Information Sheet concerning this project and understand what it is about. All my questions have been answered to my satisfaction. I understand that I am free to request further information at any stage.

I know that:-

1. My participation in the project is entirely voluntary;
2. I am free to withdraw from the project at any time without any disadvantage;
3. Personal identifying information, whether recorded on tape or noted during the interview, will be destroyed at the conclusion of the project but any raw data on which the results of the project depend will be retained in secure storage for at least five years;
4. This project involves an open-questioning technique. The general line of questioning includes the ways in which my organisation made its case during Review of Food Labelling Law and Policy about the introduction or otherwise of front-of-pack traffic light nutrition labelling. The precise nature of the questions which will be asked have not been determined in advance, but will depend on the way in which the interview develops. In the event that the line of questioning develops in such a way that I feel hesitant or uncomfortable, I may decline to answer any particular question(s) and/or may withdraw from the project without any disadvantage of any kind.

5. The results of the project may be published and will be available in the University of Otago Library (Dunedin, New Zealand) but every attempt will be made to preserve my anonymity should I choose to remain anonymous.

6. I, as the participant: a) agree to being named in the research,

☐

OR

- b) agree to being named in the research,  
subject to my approval of any  
information attributed to me,

☐

OR

- c) would rather remain anonymous

☐

*continued on back*

I agree to take part in this project.

.....  
.....  
(Signature of participant)  
(Date)

This study has been approved by the University of Otago Human Ethics Committee. If you have any concerns about the ethical conduct of the research you may contact the Committee through the Human Ethics Committee Administrator (ph 064 3 479 8256). Any issues you raise will be treated in confidence and investigated and you will be informed of the outcome.

